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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN DOE,

Petitioner,

v.

TONYA ANDREWS, Facility Administrator of Golden State Annex Detention Facility, ORESTES CRUZ, in his official capacity, Director for the San Francisco ICE Field Office; KRISTI NOEM, in her official capacity, Secretary of the Department of Homeland Security; TODD LYONS, in his official capacity, Acting Director U.S. Immigration and Customs Enforcement; and PAMELA BONDI, in her official capacity, Attorney General of the United States,

Respondents.

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. This Petition seeks constitutional due process for a man from Belize who served as an informant for the United States Drug Enforcement Agency, who has never been convicted of any crime, but who nonetheless has been detained for more than eight months. Petitioner was forced to flee Belize after he exposed corruption, drug trafficking, and weapons sales led by high-ranking officials in the Belize national police force. His courage to blow the whistle to Drug Enforcement Agency agents and Belize media cost him his safety.

2. When Petitioner arrived in the United States, immigration officials designated him for expedited removal. But an asylum officer conducted an interview over several hours and found that Petitioner has a credible fear of torture in Belize. Therefore, as required by law, Petitioner's case was referred to an immigration judge for full consideration of his asylum claims.

3. From the day he arrived in July 2024 to seek asylum, Petitioner has been incarcerated at Golden State Annex, a for-profit detention facility run by The GEO Group, Inc. Though dubbed "civil," little distinguishes Petitioner's detention from criminal confinement. He shares a dormitory with about 70 men, suffers antagonism by guards, eats mush labeled as food, pays $0.35 per minute to call his family, and earns $1 per day as a full-time kitchen worker for the facility.

4. The immigration statute and regulations, as reinterpreted in 2019 by then-Attorney General William Barr, require that asylum seekers like Petitioner, who enter the United States between ports of entry be detained without a bond hearing for the entirety of their immigration court proceedings, however long that may be, and despite having shown a credible fear of persecution. *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019) (overruling *Matter of X-K-*, 23 I&N Dec. 731 (BIA 2005)). Attorney General Barr, however, "[did] not address whether detaining transferred [asylum seekers] for the duration of their removal proceedings poses a constitutional problem." *Id.* at 509 n. 1.

5. In the wake of *Matter of M-S-*, the Western District of Washington held that the no-bond-hearing rule violates the due process rights of a class of asylum seekers in Petitioner's posture. *Padilla v. Immigr. & Customs Enf't*, 387 F. Supp.3d 1219 (W.D. Wash. 2019). The court issued a preliminary injunction ordering bond hearings within seven days of request for individuals whose proceedings are transferred to immigration court following an asylum officer finding a credible fear. *Id.* at 1229. The Ninth Circuit affirmed, explaining that "non-punitive detention violates the Constitution unless it is strictly limited, which typically means that the detention must be accompanied by a prompt individualized hearing before a neutral decisionmaker to ensure that the imprisonment serves the government's legitimate goals." 953 F.3d 1134, 1142 (9th Cir. 2020). The Supreme Court later vacated and remanded for further consideration in light of *DHS v. Thuraissigiam*, 591 U.S. 103 (2020). 141 S. Ct. 1041 (2021). The district court has since reaffirmed its due process analysis. 704 F. Supp. 3d 1163 (W.D. Wash. 2023). An interlocutory appeal is now pending. No. 24-2801, Dkt. 32 (9th Cir. Jan. 30, 2024).

6. Pursuant to the analysis in *Padilla*, Petitioner may have been entitled to a bond hearing as early as seven months ago. *See* 387 F. Supp.3d at 1232. But now at eight months with no end in sight, Petitioner's continued detention without a neutral assessment of danger or flight risk undoubtedly violates Fifth Amendment due process. *C.f. Diouf v. Napolitano*, 634 F.3d 1081, 1091-92 & n.13 (9th Cir. 2011) ("As a general matter, detention is prolonged when it has lasted six months and is expected to continue more than minimally beyond six months"), *abrogated on other grounds as recognized by Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1201 (9th Cir. 2022).

7. Petitioner respectfully urges this Court order the modest remedy of a writ of habeas corpus that requires Respondents to 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 to the community, 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 IJ shall order Petitioner's release on appropriate conditions of supervision, taking into account Petitioner's ability to pay.

JURISDICTION

8. Petitioner John Doe[1] is currently detained in the custody of Respondents at Golden State Annex in McFarland, California. Jurisdiction is proper pursuant to Article 1 § 9, clause 2 of the United States Constitution (the Suspension Clause); the Due Process Clause of the Fifth Amendment to the Constitution; 28 U.S.C. § 2241 (habeas corpus); 28 U.S.C. § 1331 (federal question); and Article III of the Constitution. 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. The government has waived its sovereign immunity and permitted judicial review of agency action under 5 U.S.C. § 702. Moreover, sovereign immunity does not bar claims against federal officials seeking solely to prevent future violations of federal law.

9. The federal habeas statute empowers this Court to decide the legality of Petitioner's detention and directs courts to "hear and determine the facts" of a habeas petition and to "dispose of the matter as law and justice require." 28 U.S.C. § 2243; *see also I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001) ("[A]t its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest."). The common law gave courts power to release a petitioner to bail even absent a statute contemplating such release. *Wright v. Henkel*, 190 U.S. 40, 63 (1903) ("[T]he Queen's Bench had, 'independently of statute, by the common law, jurisdiction to admit to bail.'") (quoting *Queen v. Spilsbury*, 2 Q.B. 615 (1898)).

[1] Pursuant to Local Rule 233(a), Petitioner will file a motion for administrative relief to proceed under pseudonym.

VENUE

10. Venue for the instant habeas corpus petition 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 Petitioner 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 (explaining petition "must be filed in the district court whose territorial jurisdiction includes the place *where the custodian is located*") (Kennedy, J., concurring) (emphasis added).

PARTIES

11. Petitioner is a citizen of Belize who fled his home country due to political persecution and threats of torture from Belize government officials. Petitioner entered the United States on or about July 1, 2024. He was detained on the same day at Golden State Annex, and he has remained incarcerated there since.

12. Respondent Tonya Andrews is the Facility Administrator (and *de facto* warden) of Golden State Annex in McFarland, California.[2] She oversees operations at Golden State Annex, where Petitioner is detained. She is a corporate employee of The GEO Group, Inc. ("GEO"), a private prison company that contracts with U.S. Immigration and Customs Enforcement ("ICE") to

[2] 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.

operate Golden State Annex.

13. Respondent Orestes Cruz is the Field Office Director for the San Francisco Field Office of ICE Enforcement and Removal Operations ("ERO"). As such, Respondent Cruz is the federal official most directly responsible for overseeing Golden State Annex. He is the local ICE official who exercises day-to-day control over Petitioner's custody. He is named in his official capacity.

14. Respondent Kristi Noem is the Secretary of the Department of Homeland Security ("DHS") and is responsible for overseeing the Department and its sub-agency, ICE. She has ultimate responsibility for the detention of noncitizens in civil immigration custody. She is named in her official capacity.

15. Respondent Todd Lyons is the Acting Director for U.S. Immigration and Customs Enforcement ("ICE"). Respondent Lyons is responsible for ICE's policies, practices, and procedures, including those relating to the detention of immigrants. He is named in his official capacity.

16. Respondent Pamela Bondi is the 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"). She is empowered to oversee the adjudication of removal and bond hearings and by regulation has delegated that power to the nation's immigration judges and the BIA. She is named in her official capacity.

STATEMENT OF FACTS

I. Petitioner's Life Prior to His Arrival in the United States

17. Petitioner was born in Belize in 1997. He grew up in a humble home. After graduating high school, he matriculated through an air conditioner technician training program. Petitioner worked for a local air conditioning company for a couple of years.

18. In 2018, Petitioner took an opportunity to transition careers. He was offered a basic officer position at the Belize Central Prison, where he was quickly promoted to intelligence officer after leading a contraband seizure mission. Over time, however, the work at the prison grew difficult for Petitioner due to the subpar standards of care and his disagreement with the abuse of prisoners perpetrated by other officers.

19. One day, during a human trafficking training at the prison, United States government representatives were present. One of those representatives was an agent with the United States Drug Enforcement Agency ("DEA"). Because Petitioner worked as an intelligence officer at the prison, the DEA agent offered Petitioner her contact information.

20. Due to his disagreement with the harsh treatment inflicted on the prisoners, Petitioner eventually resigned from his intelligence officer role. But he kept in touch with certain Belizean police officials that he met there.

21. While working at the prison, Petitioner became acquainted with high-ranking officials in the Belize Police Department, the national police force. One of those police officials hired Petitioner, first to do some electrician work, then to help with vehicle sales.

22. In the beginning, the officials treated Petitioner well. The officials compensated Petitioner for every vehicle he sold according to their agreement. Over time, however, Petitioner realized that the car sales business had ulterior means and ends. Petitioner witnessed activities indicating that the police official used the car sales business to engage in drug trafficking, illegal sale of firearm permits, weapons sales, and other illicit conduct.

23. By the time Petitioner realized the nature of the police officers' conduct, it was too late. The officers pressured Petitioner to keep quiet, and Petitioner felt he had no way out. Despite this fear, on multiple occasions, he contacted the DEA agent he met while working at the prison and provided real-time intelligence about drug plane landings, gun license sales, and other corruption.

24. The pressure of leading this double life was overwhelming until it became unbearable. Petitioner wanted out. He pleaded with the DEA agent to help him get away from the corrupt police officers to no avail. Without any other option to protect himself from the police, Petitioner decided to begin speaking to a reporter for a prominent news broadcaster in Belize about the pervasive corruption in the police department. He hoped that the public eye on the situation would provide security and protection. It did not.

25. Despite all efforts to find safety in Belize, Petitioner faced constant threats to his freedom, to his life, and to the wellbeing of his wife and children. In 2024, he eventually made the difficult decision to flee Belize, sadly leaving behind his wife and three young children. Though the police have levied fabricated charges against Petitioner, he was never convicted of a crime in Belize.

II. Petitioner's Arrival to the United States

26. On July 1, 2024, Petitioner entered the United States between ports of entry. He was in a state of panic and believed this was the only sure way to reach safety from the threats he faced in Belize. He was arrested on the same day as his entry into the country by Border Patrol. Border Patrol immediately issued an Expedited Removal Order pursuant to pursuant to 8 U.S.C. § 1225(b)(1)(A)(i), which applies to noncitizens who cross a land border without inspection and are arrested within 100 miles of the border within two weeks of their arrival. Border Patrol detained Petitioner at the San Diego Border Patrol Station, then transferred him into ICE custody at Golden State Annex.

27. Due to his expression of fear of returning to Belize, Petitioner was referred to a Credible Fear Interview with an asylum officer, which occurred on August 1 and 7, 2024. *See* 8 U.S.C. § 1225(b)(1)(A)(ii). The asylum officer found Petitioner to be credible and to have a credible fear of torture if removed back to Belize. Declaration of Callard Cowdery ("Cowdery Decl.") ¶ 4. Therefore, Petitioner's Expedited Removal Order was vacated, and he was issued an order to

appear in immigration court for full proceedings on his claims for protection from removal before an immigration judge. *See* 8 C.F.R. § 208.30(f).

28. Despite demonstrating a credible fear of torture in Belize, and despite having no prior criminal convictions or immigration history, Petitioner remains detained.

III. Petitioner's Prolonged Detention in ICE Custody in Deplorable Conditions

29. For more than eight months, Petitioner has fought to be heard from behind the concrete walls of Golden State Annex.

30. At Golden State Annex, Petitioner lives in a dormitory packed to the brim with about 70-80 other men. For this mass of human beings in a small space, the facility offers only six toilets, four urinals, and nine sinks. Without a door to close, there is no privacy in the toilet area. Beyond exposure during the most intimate parts of daily life, Petitioners has often felt unsafe and vulnerable while living with so many unknown people. He has even altered his sleep schedule to rest during the daytime to remain watchful through the night.

31. Golden State Annex is an immigration detention center that GEO Group owns and operates for profit in McFarland, California. Though renamed as a civil detention center, Golden State Annex was previously used as a correctional facility.[3] In the last two years, immigrants detained at Golden State Annex, congressmembers, and internal oversight bodies have raised the alarm about unlivable and unsanitary housing conditions. For example:

- Mass hunger strikes to protest living and labor conditions are common at Golden State

[3] *See* Centro Legal de la Raza, "Report: Golden State Annex-Impacted Communities and Immigration Enforcement Trends" (July 27, 2021), available at https://bit.ly/41O7hGq; Sam Morgen, "ICE expands into former McFarland prisons, drastically increasing capabilities," Bakersfield.com (Sept. 11, 2020), available at https://bit.ly/3ApJ1Pu.

Annex, two of the more recent having occurred in the early 2023[4] and mid 2024.[5]

- On May 4, 2023, six members of Congress sent a letter to the Department of Homeland Security and ICE elevating concerns "about dangerous work conditions, [the] $1-a-day pay rate, lack of nutritional meals, access to medical care, high commissary costs and prices for calls, unsafe living conditions, disrespectful behavior from staff, and the lack of a meaningful grievance process."[6]
- On April 18, 2024, the DHS Office of the Inspector General reported results from its unannounced inspection that Golden State Annex. The findings included that Golden State Annex "did not comply with cleanliness and sanitation standards" and "did not take required actions on paper medical grievances."[7]

32. Petitioner's experiences at Golden State Annex follow the facility's observed trends of depriving people detained there of safe and humane living conditions.

33. For example, Golden State Annex has denied Petitioner necessary medical care. When

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[4] Press Release: Seventy-seven Detained Immigrants Launch Hunger Strike at Two Central Valley Facilities, Protest Unpaid Labor and Inhumane Conditions, https://www.aclunc.org/news/seventy-seven-detained-immigrants- launchhunger-strike-two-central-valley-facilities-protest.

[5] Migrants Launch Hunger Strike at Two Private ICE Detention Centers in California, Democracy Now, https://www.democracynow.org/2024/8/7/headlines/migrants_launch_hunger_strike_at_two_private_ice_detention_centers_in_california (Aug. 7, 2024); Protestan en San Francisco por inmigrantes en huelga de hambre en centros de detencion del Valle Central, Telemundo, https://www.telemundoareadelabahia.com/noticias/local/san-franciscoprotestas-inmigrantes-centros-detencion/2406869/ (July 31, 2024).

[6] Letter from Members of Congress of the United States to Alejandro Mayorkas, Sec'y, U.S. Dep't of Homeland Security, and Tae Johnson, Acting Dir., U.S. Immigration and Customs Enforcement (May 4, 2023), https://7330553c-3dac-4189-926d-9d7bbfbf56ea.usrfiles.com/ugd/733055_6eeb5fed590d44db8e5c02c41102e0b3.pdf.

[7] U.S. Dep't of Homeland Security, Office of Inspector General, OIG-24-23, Results of an Unannounced Inspection of ICE's Golden State Annex in McFarland, California (2024), https://www.oig.dhs.gov/sites/default/files/assets/2024-04/OIG-24-23-Apr24.pdf.

Petitioner was first detained, he had diabetes, which required monitoring of his blood sugar levels, frequent meals, and regularly administered medication. Petitioner's medical needs were not met, so much so that Petitioner filed at least six grievances to GEO Group begging for medical services.

34. Golden State Annex has also served meals infested with weevils to Petitioner and other people detained in his dormitory. The experience of holding a plate of contaminated food was revolting and dehumanizing. When Petitioner complained to the guard on command, he and his dormmates were accused of contaminating the food themselves. In response to this treatment, Petitioner and others went on a three-day hunger strike. Rather than engaging with the strikers' demands for safe food, GEO Group imposed new food restrictions on the dorm that prohibited eating non-commissary food anywhere outside of the cafeteria hall, which they were previously allowed to do.

35. Golden State Annex officers have harassed Petitioner. On at least one occasion, an officer threatened to physically strike Petitioner. On another occasion, a lieutenant at Golden State Annex loudly mocked Petitioner and exposed aspects of his asylum claim. These instances, among others, have left Petitioner feeling unsafe in the facility.

36. Petitioner has witnessed unaddressed sexual harassment at Golden State Annex. While confined to his dormitory with other detained people, he has seen GEO Group guards sexually harass other men in the dormitory.

37. Apart from unlivable conditions, Petitioner has also struggled to support his defense against deportation from inside Golden State Annex. Petitioner has always known that he will need evidence to support his case for asylum or other humanitarian protection from deportation to Belize. When Petitioner left Belize, he brought with him evidence of his interactions with the DEA, reports to the media, and attempts to expose the Belize police official's criminal enterprise. All this evidence was stored on his smartphone, which immigration officials confiscated upon

Petitioner's arrest. On multiple occasions, Petitioner asked his jailers at Golden State Annex for access to his personal property to obtain the critical documents and support for his immigration case. GEO Group guards either ignored his requests or delayed responding to them, and by doing so, restrained Petitioner's ability to defend himself in immigration court. Only months later, after he retained *pro bono* counsel who echoed his demands for access to his personal property, did Golden State Annex finally relent.

38. Despite the distressing experience of remaining detained at Golden State Annex, Petitioner has participated in the so-called Voluntary Work Program at the facility. In October 2024, he completed the required training to become a barber for other detained people. The barbershop where Petitioner worked provides grooming for the entire facility, which holds about 700 people. The equipment provided for the job, however, does not function and is unhygienic. For example, the mere two sets of clippers for the whole facility do not just glitch, but GEO refuses to provide any alcohol or other sanitizing liquid to clean them between detainees. Petitioner has observed that he and other people who get their hair cut have quintessential red rashes on their scalps due to the cross-contamination. Petitioner recently switched jobs and now works in the kitchen for eight hours a day, five days a week. For his labor, GEO pays him $1 per day.

IV. Petitioner's Immigration Proceedings

39. Because Petitioner established a credible fear of torture in Belize during his interview before the Asylum Office, DHS issued Petitioner a Notice to Appear for immigration court proceedings on August 14, 2024. Cowdery Decl. ¶¶ 4-5; *see* 8 C.F.R. § 208.30(f).

40. Petitioner arrived in the United States with less than $300 to his name, and he did not have any family members that could readily pay an attorney for full scope representation. Because of this, he immediately set out to seek consultations with free legal service providers to help him understand and develop his legal case.

41. Around two months after being detained, Petitioner completed his I-589 Application for Asylum, which he later filed with the immigration court. Cowdery Decl. ¶ 7.

42. Petitioner has diligently pursued his case for asylum and protection from removal in the immigration court. Regardless of the decision of the immigration judge, either Petitioner or DHS can appeal the order to the BIA, which can remand the case for further proceedings at the immigration court. Cowdery Decl. ¶ 12. Petitioner may also seek Ninth Circuit review of any adverse BIA decision. *See* 8 U.S.C. § 1252. Given these various layers of fact-finding and appeals, Petitioner's now eight-month detention could last for years.

LEGAL FRAMEWORK

43. ICE continues to detain Petitioner without a bond hearing pursuant to then-Attorney General Barr's 2019 reinterpretation of the Immigration and Nationality Act and its implementing regulations. But civil detention has its constitutional limits, among them, the Fifth Amendment Due Process Clause. With this Court's intervention, an immigration judge would be authorized to conduct a neutral assessment of Petitioner's detention, and if appropriate, release him.

I. Administrative Law

44. Prior to 2019, immigration judges had authority to hold bond hearings for immigrants who had not been admitted[8] but had established a credible fear of persecution before an asylum officer. *See Matter of X-K-*, 23 I&N Dec. 731 (BIA 2005) *overruled by Matter of M-S-*, 27 I&N Dec. 509

[8] Though not "admitted," Petitioner came to this country to seek asylum. Federal law guarantees non-citizens on U.S. soil or at ports of entry the right to seek asylum and related humanitarian protections, regardless of how, where, or with whom they arrive at the U.S. border or crossed into the country. *See* 8 U.S.C. § 1158(a)(1) (asylum); 8 U.S.C. § 1231(b)(3) (withholding of removal); 8 C.F.R. § 208.1 (protection under the Convention Against Torture). The asylum statute, codified in the Refugee Act of 1980, reflects "one of the oldest themes in America's history—welcoming homeless refugees to our shores," and "gives statutory meaning to our national commitment to human rights and humanitarian concerns." Sen. Rep. No. 256, 96th Cong., 1st Sess. 1 (1979), *reprinted in* U.S. Code Cong. and Admin. News 141, 141.

(A.G. 2019). Immigration judges' custody determination authority was recognized in *Matter of X-K-*, a decision from a panel of three members of the Board of Immigration Appeals ("BIA"). In that case, the BIA observed that DOJ regulations explicitly excluded from bond-hearing eligibility immigrants who arrived at ports of entry. *Matter of X-K-*, 23 I&N Dec. at 732 (citing 8 C.F.R. § 1003.19(h)(2)(i)(B)). By contrast, the regulations were silent with respect to the category of "other aliens" (like Petitioner here) who had not arrived at a port of entry but nonetheless were designated for expedited removal. The BIA was "not persuaded that there is regulatory authority for the DHS's position that such aliens are not eligible for a bond hearing before an Immigration Judge." *Id.* at 734.

45. The BIA is the highest administrative body charged with the interpretation and application of immigration law, but DOJ regulations grant the Attorney General "unfettered [] authority to usurp the BIA." *Xian Tong Dong v. Holder*, 696 F.3d 121, 124 (1st Cir. 2012). Specifically, 8 C.F.R. § 1003.1(h)(1)(i) authorizes the Attorney General to direct the BIA to refer specific cases to him for review.

46. In 2019, then-Attorney General Barr invoked this referral power and proceeded to overturn the BIA's decision in *Matter of X-K-*. *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019). He ruled that ICE can subject asylum seekers in Petitioner's posture to prolonged detention for the duration of their immigration proceedings without a bond hearing. *Id.* at 510.

47. Petitioner does not challenge *Matter of M-S-*. The foregoing explanation is meant to illuminate that Attorney General Barr abruptly reversed longstanding agency practice affecting the liberty interests of untold thousands of people—not through new regulations following notice and comment, but via an arguable reinterpretation of the relevant regulations. Even as he worked this sea change in the law governing access to neutral custody review, he acknowledged that his decision "[did] not address whether detaining transferred [migrants] for the duration of their

removal proceedings poses a constitutional problem." *Id.* at 509 n. 1. That issue is presented here.

II. Constitutional Due Process

48. Due process protects noncitizens from arbitrarily prolonged detention. The "Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). "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. *Id.* at 690. As such, due process requires "adequate procedural protections" to ensure that the government's asserted justification for confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Id.*

49. The Supreme Court has left open the question of whether the Fifth Amendment countenances immigration detention that lasts more than six months without a bond hearing. *See Jennings v. Rodriguez*, 583 U.S. 281, 312 (2018) (remanding case to the Ninth Circuit "to consider respondents' constitutional arguments on their merits"). The court has held that "brief" detention under Section 1226(c), a statute that states certain classes of noncitizens previously convicted of crimes "shall" be detained, does not violate the Constitution. *Demore v. Kim*, 538 U.S. 510, 513, 529 & n.12, 530 (2003) (assuming that detention lasts "an average. . . of 47 days" and "about five months in the minority of cases in which the [noncitizen] chooses to appeal").[9] The court's blessing of "brief" detention did not, however, change its assessment that "[a] statute permitting

[9] After the Court in *Demore* issued its decision based on the government's professed estimate of detention length, the government admitted that it had submitted incorrect estimates of detention duration that were much shorter than in reality; in fact, people who appealed immigration court decisions spent over a year in custody, on average. *See* Letter from Ian H. Gershengorn, Acting Solic. Gen., to Hon. Scott S. Harris, Clerk, Supreme Court (Aug. 26, 2016). The estimate is now much longer: "as of 2015, the median length of time it takes the BIA to complete an appeal . . . exceeds 450 days." *See Rodriguez v. Nielsen (Rodriguez)*, Case No. 18-cv-04187-TSH, 2019 WL 7491555, at *5 (N.D. Cal. Jan. 7, 2019).

indefinite detention of [a noncitizen] would raise a serious constitutional problem." *Zadvydas*, 533 U.S. at 690.

50. After the Supreme Court remanded the constitutional issue to the Ninth Circuit, the Ninth Circuit further remanded it to the district court. *See Rodriguez v. Marin*, 909 F.3d 252 (9th Cir. 2018). The Ninth Circuit noted in its remand order that it had "grave doubts that any statute that allows for arbitrary prolonged detention without any process is constitutional or that those who founded our democracy precisely to protect against the government's arbitrary deprivation of liberty would have thought so." *Id.* at 256.

51. Another case pending before the Ninth Circuit, *Padilla*, also casts serious doubt on the constitutionality of detaining asylum seekers who, like Petitioner, establish a credible fear of persecution. Following *Matter of M-S-*, the Western District of Washington concluded that mandatory detention of asylum seekers who pass their credible fear interview violates due process. *Padilla v. U.S. Immigr. & Customs Enf't*, 387 F. Supp. 3d 1219, 1222-23 (W.D. Wash. 2019).

52. The Ninth Circuit affirmed the *Padilla* injunction's due process finding. *Padilla v. Immigr. & Customs Enf't*, 953 F.3d 1134 (9th Cir. 2020). In doing so, the court reiterated a long-standing principle that "[i]mmigration detention, like all non-punitive detention, violates the Due Process Clause unless 'a special justification ... outweighs the individual's constitutionally protected interest in avoiding physical restraint.'" *Id.* at 1143 (quoting *Zadvydas*, 533 U.S. at 690).

53. The Supreme Court later vacated and remanded the Ninth Circuit's order "for further consideration in light of *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020)." *Immigr. & Customs Enf't v. Padilla*, 141 S. Ct. 1041 (2021). The Ninth Circuit remanded the case back to the district court to consider the question in the first instance. *Padilla v. Immigr. & Customs Enf't*, 41 F.4th 1194 (9th Cir. 2022). Plaintiffs amended their complaint, and upon the

government's motion to dismiss, the district court held that the "the Supreme Court's decision in *Thuraissigiam* does not undermine Plaintiffs' due process claim." *Padilla v. U.S. Immigr. & Customs Enf't*, 704 F. Supp. 3d 1163, 1175 (W.D. Wash. 2023). The court then granted the government's motion to certify that question for interlocutory appeal to the Ninth Circuit, where it remains. No. C18-928 MJP, 2024 WL 1049898 (W.D. Wash. Mar. 11, 2024).

ARGUMENT

54. Under the Western District of Washington's well-reasoned analysis in *Padilla*, Petitioner's request for a bond hearing should have been honored after his positive credible fear determination "in an expedited fashion." *See Padilla*, 704 F. Supp. 3d at 1174. But especially now that Petitioner's detention has become prolonged, his continued confinement in ICE custody without a bond hearing violates due process.

I. Petitioner's Detention Beyond Six Months Without a Hearing Offends Due Process

55. Across both the civil and criminal contexts, courts have consistently set six months of confinement as a triggering point for heightened procedural safeguards. In the criminal context, the Supreme Court set six months as the limit of confinement for criminal offenses that a court can impose without the procedural protection of a jury trial. *Cheff v. Schnackenberg*, 384 U.S. 373, 380 (1966) (plurality opinion). The Supreme Court then extended this six-month line to the civil context in a case setting out procedural requirements for civil commitments related to mental health. *McNeil v. Dr., Patuxent Inst.*, 407 U.S. 245, 250-52 (1972). In *McNeil*, the court held that due process requires procedural safeguards for civil confinements that are not "strictly limited" in length, noting that the six-month limit for civil commitments without an individualized inquiry originally laid out by the relevant statute "provides a useful benchmark." *Id.*

56. The Ninth Circuit applied the six-month line to immigration detention, holding that when

"detention crosses the six-month threshold and release or removal is not imminent," "a hearing before a neutral decision maker" is a "reasonable" procedural safeguard. *Diouf*, 634 F.3d at 1092. In the absence of binding appellate authority overturning the specific holding in *Diouf* regarding the constitutionality of detention beyond 180 days without a bond hearing, the six-month rule remains a viable constitutional rubric in the Ninth Circuit. *See also Padilla*, 704 F. Supp. 3d at 1174 ("Plaintiffs have sufficiently alleged that they are entitled to a bond hearing in an expedited fashion.").

57. Because ICE has already detained Petitioner without providing him with a custody hearing for over six months and will continue to detain him for many more months for the duration of his asylum case and any future appeals, due process requires this Court to order a bond hearing for Petitioner. *See* Cowdery Decl. ¶¶ 11-12; *Diouf*, 634 F.3d at 1092.

II. Under *Mathews v. Eldridge*, Petitioner Is Constitutionally Entitled to a Bond Hearing

58. Even if this Court were not to embrace the principle that due process prohibits civil detention longer than six months without a bond hearing, assessment of other factors would also demand a bond hearing for Petitioner.

59. The Supreme Court provided a rubric in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) that courts have embraced to assess due process challenges to immigration detention without a bond hearing. *See, e.g., Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (assuming without deciding that *Mathews* applied to a request for a second bond hearing); *Padilla*, 704 F. Supp. 3d at 1173-74; *Doe*, 2025 WL 691664, at *5-6; *Sho*, 2023 WL 4014649, at *3-5.

60. The three *Mathews* factors include (1) the private liberty interest threatened by governmental action; (2) the risk of erroneous deprivation of such interest and the probable value of additional procedural safeguards; and (3) the government interest. *Mathews*, 424 U.S. at 335.

a. Petitioner's Liberty Interests

61. 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. To start, all people have "a substantial liberty interest in being free from confinement and an interest in preventing arbitrary detention." *See Padilla*, 704 F. Supp. 3d at 1174. That interest is amplified for Petitioner. ICE has already imprisoned Petitioner for eight months at the time of this Petition's filing. *See Diouf*, 634 F.3d at 1091-92 ("When detention crosses the six-month threshold and release or removal is not imminent, the private interests at stake are profound."). Petitioner's time in civil detention is now *four times* the length of the "brief" detention contemplated by the Court in *Demore*. *See Demore*, 538 U.S. at 530 (citing an average detention length of one and a half months for cases that do not involve an appeal). And his confinement is likely to continue for many more months, if not years. Cowdery Decl. ¶¶ 11-12.

62. Another significant private interest that Petitioner holds is freedom from the conditions at Golden State Annex, including pest-infested meals, unredressed sexual harassment, and antagonism from guards. Petitioner is being held in a setting equivalent to criminal corrections at a detention center with abusive conditions.[10] The conditions at Golden State Annex are inhumane—an assessment numerous courts (and reputable news organizations) have echoed.[11]

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[10] 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.

[11] 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*

Indeed, GEO Group, the company that operates Golden State Annex, has a history of inflicting abuse at the facility. For example, several immigrants' rights organizations recently filed a complaint against the facility for excessive use of force, including retaliation against detainees.[12] "[T]he government's choice to detain noncitizens like [Petitioner] in a crowded facility, with operations outsourced to a private contractor, informs the due process consideration of how long is too long." *Doe v. Becerra*, 732 F. Supp. 3d 1071, 1089 (N.D. Cal. 2024).

63. Petitioner's medical stability is also at stake. While detained at Golden State Annex, Petitioner has filed at least six grievances, in addition to verbal complaints, begging for timely medical assistance. Before being detained, Petitioner did not have issues with administering his own medication or accessing medical care. While detained, Petitioner's health is at the whim of GEO Group medical employees, who are often unhelpful.

64. Golden State Annex also restrained Petitioner from accessing his personal property to obtain vital evidence to support his asylum claims. Petitioner has a substantial interest in liberty from his incarceration, where his health, asylum case, and safety are all at risk.

b. The Risk of Wrongful Incarceration Absent a Bond Hearing

65. The second prong of the *Mathews* test calculates the risk of erroneous deprivation of such

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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.

[12] Officers physically and psychologically assaulted an entire dormitory of detainees who had protested unlivable conditions at the facility, using brutal 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.

liberty interests, considering the available procedures and the probable value of additional procedural safeguards. 424 U.S. at 335. Generally, "the 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; *see also Rodriguez*, 909 F.3d at 256-57 ("Liberty is the norm, and detention prior to trial and without trial is the carefully limited exception.").

66. Absent a bond hearing, the only process of which Petitioner can avail himself, and did, is ICE's discretionary parole authority, which ICE can decline to grant without explanation. *See* 8 U.S.C. § 1182(d)(5)(A) ("The Secretary of Homeland Security may . . . in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States[.]"); *see also* 8 C.F.R. § 212.5(b) (authorizing discretionary parole for certain categories of migrants "on a case-by-case basis for 'urgent humanitarian reasons' or 'significant public benefit,' provided the aliens present neither a security risk nor a risk of absconding); Cowdery Decl. ¶¶ 8-9. But, for at least two reasons, "the discretionary parole system available to § 1225(b) detainees is not sufficient to overcome the constitutional concerns raised by prolonged mandatory detention." *Rodriguez v. Robbins*, 715 F.3d 1127, 1144 (9th Cir. 2013), *abrogated on other grounds sub. nom. Jennings v. Rodriguez*, 583 U.S. 281 (2018).

67. *First*, as observed in *Padilla*, "[t]he parole process does not afford the noncitizen an in-person adversarial hearing before a neutral decisionmaker where he or she may present witness testimony or evidence.[] Additionally, the ICE detention officer need not make any factual findings or provide their reasoning, and there is no apparent right to an administrative appeal." *Padilla*, 704 F. Supp. 3d at 1174. That is precisely what occurred here – ICE's summary denial letter provided no explanation of the facts it considered when denying parole to Petitioner, nor did Petitioner have any opportunity to challenge the denial. Cowdery Decl. ¶ 9.

68. *Second*, in the notice denying Petitioner parole, ICE stated Petitioner had "not establish[ed] *to ICE's satisfaction* that [he is] not a flight risk . . . security risk or a danger to the community." Cowdery Decl. ¶ 9 (emphasis added). But due process places "a heightened burden of proof *on the State* in civil proceedings in which the individual interests at stake[.]" *Singh v. Holder*, 638 F.3d 1196, 1204 (9th Cir. 2011) (emphasis added), *abrogated on other grounds by Rodriguez Diaz*, 53 F.4th at 1202; *see also Ixchop Perez v. McAleenan*, 435 F. Supp. 3d 1055, 1062 (N.D. Cal. 2020); *Gonzalez*, 2019 WL 330906, at *6; *Singh v. Barr*, 400 F. Supp. 3d 1005 (S.D. Cal. 2019).

69. ICE's parole system provides no insight into what information it relied upon to make Petitioner's custody determination. Therefore, "the risk of an erroneous deprivation of liberty in the absence of a hearing before a neutral decisionmaker" favors granting this Petition. *See Diouf*, 634 F.3d at 1092.

c. The Government's Negligible Interest in Detaining Petitioner Without a Bond Hearing

70. The third *Mathews* factor also supports Petitioner. Petitioner is challenging his prolonged detention without a bond hearing, not whether the government may detain him at all. To date, the government has not articulated any interest in detaining Petitioner without an individualized bond hearing, nor has the government given any reason to justify Petitioner's continued prolonged detention based on danger or flight risk.

71. The government's interest in continuing to detain Petitioner without procedural safeguards is low. *See Padilla*, 704 F. Supp. 3d at 1174 ("Plaintiffs have sufficiently alleged that the government lacks a legitimate interest in denying bond hearings before a neutral decisionmaker to detained noncitizens with pending bona fide asylum applications); *Henriquez*, 2022 WL 2132919, at *5 ("[T]he Government's interest in detaining Petitioner without providing an individualized bond hearing is low.").

72. 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 v. Decker*, 104 F.4th 133, 153 (2d Cir. 2024). 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.

73. 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.

74. Moreover, requiring Respondents to justify Petitioner'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." *Id.*

75. Thus, applying the *Mathews* factors, this Court should find that due process entitles Petitioner to an individualized bond hearing by an Immigration Judge.

III. Standards for Bond Hearing to Comply with Due Process

76. Petitioner requests a 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 at 1202; *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 "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. Supp. 3d 1005 (S.D. Cal. 2019) (finding due process requires the government to bear the burden in immigration bond proceedings).

77. 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 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"). Alternatives to detention must be considered in determining whether prolonged incarceration is warranted.

78. Finally, due process requires consideration of a noncitizen's ability to pay a monetary 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 (citation omitted). 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.*

CLAIM FOR RELIEF

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

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

80. 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.

81. 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. *See Singh*, 638 F.3d at 1204 ("[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).

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1) Assume jurisdiction over this matter;

2) Issue a Writ of Habeas Corpus and order Respondents, unless they elect to release Petitioner, to 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 conditions of supervision; and (2) if the government cannot meet its burden, the immigration judge shall order Petitioner's release on appropriate conditions of supervision, taking into account Petitioner's ability to pay a bond;

3) Issue a declaration that Petitioner's ongoing prolonged detention without a bond

hearing violates the Due Process Clause of the Fifth Amendment;

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

5) Grant such further relief as the Court deems just and proper.

Dated: March 19, 2025

LAWYERS' COMMITTEE FOR CIVIL RIGHTS OF THE SAN FRANCISCO BAY AREA

By: */s/ Victoria Petty*
Victoria Petty
Jordan Wells

Attorneys for Petitioner

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

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

Dated: March 19, 2025

/s/ Victoria Petty
Victoria Petty
Attorneys for Petitioner