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OF THE SAN FRANCISCO BAY AREA
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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, Director for the San Francisco ICE Field Office;

KRISTI NOEM, Secretary of the Department of Homeland Security

TODD LYONS, Acting Director U.S. Immigration and Customs Enforcement; and

PAMELA BONDI, Attorney General of the United States

Respondents, acting in their official capacity

Case No. 1:25-cv-00333-JLT-HBK

PETITIONER'S TRAVERSE IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

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INTRODUCTION

Respondents' return[1] to the habeas petition reflects misapprehension of the relevant law and authorities governing the disposition of this case. The return also relies heavily on a decision in a *pro se* case that departs from the great weight of authority in the Ninth Circuit. Petitioner is an asylum seeker[2] from Belize who fled persecution after he exposed corruption at the highest ranks of the Belize Police Department, including to the United States Drug Enforcement Agency. In violation of Petitioner's procedural due process rights, Immigration and Customs Enforcement ("ICE") has detained Petitioner without a bond hearing for over ten months while he pursues asylum in immigration court. Even after the immigration court reaches a decision on his asylum claim, multiple time-consuming appeals may follow, during which ICE will continue to incarcerate Petitioner.

A bond hearing is a modest procedural safeguard regularly ordered by courts in this District to noncitizens in Petitioner's posture, which Respondents do not contest. Nor do Respondents refute that a bond hearing would promote public safety and ensure Petitioner's appearance in immigration court. Instead, Respondents take an absolutist stance that detained noncitizens are *never* constitutionally entitled to bond hearings, absent a showing that the detention is for some overtly unlawful purpose. All courts in this Circuit to consider this position have rejected it, except

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[1] Although styled as a "motion to dismiss," Respondents' submission is a garden-variety return to the habeas petition with arguments on the merits of the lawfulness of the challenged custody. Accordingly, pursuant to the habeas statute, *c.f.* 28 U.S.C. § 2243 (describing procedures, including return), and this Court's order setting a briefing schedule, ECF 7 at 3 (describing a motion to dismiss as a "limited response" arguing for a "bar to a merits review"), Petitioner's traverse should complete the pleadings. Any self-styled "reply" by the government in support of its purported "motion to dismiss" would be a sur-reply on the merits that is not contemplated by the Court's order or longstanding habeas procedures.

[2] Respondents attached as exhibits to their Motion unredacted documents with Petitioner's name, sensitive personal data, and photograph. *See* ECF 10-1, Exs. 1-10. This was improper because Petitioner's administrative motion to proceed in this Action remains under submission with the Court. *See* ECF 4.

this Court's previously noted decision in a *pro se* case without comprehensive briefing by competent counsel. *Compare Eliazar v. Wofford*, 2025 WL 711190 (E.D. Cal. Mar. 5, 2025); *Diep v. Wofford*, 2025 WL 604744 (E.D. Cal. Feb. 25, 2025); *Lopez v. Garland*, 631 F. Supp. 3d 870 (E.D. Cal. Sept. 29, 2022); *Doe v. Becerra*, No. 2:25-CV-00647-DJC-DMC, 2025 WL 691664 (E.D. Cal. Mar. 3, 2025); *Hilario M.R. v. Warden, Mesa Verde Det. Ctr.*, No. 1:24-CV-00998-EPG-HC, 2025 WL 1158841, at *7-9 (E.D. Cal. Apr. 21, 2025) *with Keo v. Warden-Mesa Verde ICE Processing Center*, 2025 WL 1029392 (E.D. Cal. Apr. 7, 2025). The *Keo* decision conflicts with binding Ninth Circuit law. Moreover, the petitioner in *Keo* was detained under a different statute than Petitioner here, so the reasoning is inapplicable to this case.

Respondents' submission casts no doubt that Petitioner's as-yet unprotected liberty interests warrant a bond hearing as a matter of due process. Therefore, this Court should grant the Petition.

ARGUMENT

Respondents pose two alternative arguments for why the Petition should be denied, neither of which succeeds. ***First***, Respondents first invite the Court to adopt the reasoning from *Keo v. Warden-Mesa Verde ICE Processing Center*, a decision in a *pro se* case that departed from the consensus of district court judges in this Circuit, by denying a noncitizen's procedural due process challenge to his 22-month long detention simply because his removal proceedings were ongoing. Mot. at 5-6 (citing 2025 WL 1029392, at *8). *Keo* does not, by its own terms, apply to Petitioner here. But if the Court finds otherwise, Petitioner respectfully asks that the Court decline to follow *Keo*, as the decision does not properly apply Ninth Circuit law. ***Second***, Respondents use the framework from *Mathews v. Eldridge*, 424 U.S. 319 (1976) to repackage their first argument. Respondents argue that no daylight exists between the government goals upheld in *Demore v. Kim*, 538 U.S. 510 (2003) and the need to detain Petitioner, and that those goals are too "strong" to be

outweighed by any liberty interest Petitioner holds, no matter how long he remains confined. But *Demore* offers no shelter for Respondents' position, as this District and others have consistently held. This Court should reject Respondents' misinterpretation of precedent and instead hold that Petitioner's interest in procedural safeguards to ensure that his ongoing deprivation of liberty is justified.

A. *Keo v. Warden-Mesa Verde ICE Processing Center* does not apply to this case and was wrongly decided.

The Court should decline to apply *Keo* for at least two reasons. First, *Keo* is irrelevant to this case, because Petitioner here is not detained under 8 U.S.C. § 1226(c), the detention statute before the court in *Keo*. Second, *Keo* ignored Ninth Circuit law casting serious doubt on the constitutionality of detention that endures for long periods of time and requiring courts to balance a noncitizen's liberty interest against the government's purported interests in continued prolonged confinement without a bond hearing.

1. Petitioner here is detained under a materially different statute.

Putting aside whether *Keo*'s reasoning is correct (which, as explained *infra*, it is not), *Keo* does not translate to due process challenges brought by noncitizens detained under 8 U.S.C. § 1225(b)(1)(B)(2) following demonstration before an asylum officer that they have a credible fear of persecution in their country of origin. The petitioner in *Keo* was detained for 22 months without a bond hearing by ICE under 8 U.S.C. § 1226(c), the INA provision which states that DHS "shall take into custody" any noncitizen who is "inadmissible" or "deportable" by reason of having committed certain enumerated criminal offenses. 2025 WL 1029392, at *3-4 (quoting § 1226(c)). *Keo* emphasized the Supreme Court's decision in *Demore*, which rejected a facial challenge to mandatory detention of lawful permanent residents under § 1226(c) due to evidence that "Congress drafted § 1226(c) to respond to the increasing rates of crime and failure to appear for removal

hearings *among removable noncitizens convicted of certain crimes*." *Id.* at *5 (citing 538 U.S. at 518-21) (emphasis added). Because removal proceedings were ongoing, the court held that *Demore* precluded any further inquiry into the reasonableness of the detention on procedural due process grounds. *Id.* at *7 ("Petitioner's continued detention serve[d] the purported immigration purpose" described in *Demore*). In other words, *Keo* held that Congress's goals as described in *Demore* applied to the petitioner before it. *See id.* at *7-8.

But the statistics and congressional concerns in *Demore* do not apply to all noncitizens facing removal, and certainly not to asylum seekers without criminal convictions. It is undisputed that Petitioner is detained under 1225(b)(1)(B)(ii), which states that if a noncitizen is originally placed in expedited removal proceedings but subsequently establishes a credible fear before an asylum officer, the noncitizen "shall be detained for further consideration of the application for asylum."[3] *Accord* Mot. at 2 ("Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(1)(B)(ii)"). Unlike in *Demore*, the government has put forth no empirical evidence—let alone evidence forming the basis of a narrowly targeted congressional enactment—that detaining asylum seekers is necessary to protect the community or ensure appearance in immigration court. *See* Mot. at 3-6; *see also Padilla v. U.S. Immigr. & Customs Enf't*, 704 F. Supp. 3d 1163, 1173 (W.D. Wash. 2023) ("Defendants can point to no similar public safety concerns or flight risk that

[3] Petitioner is not detained, as Respondents misleadingly suggest, for criminal conduct. *See* Mot. at 6. Nor is Petitioner "fleeing crimes in his country of origin." *See id.* Petitioner has not been convicted of any crime in Belize or the United States and was forced to flee Belize because of political persecution. Petition at ¶ 1, 25. Further, the INTERPOL notice that Respondents attach, ECF 10-1 Ex. 10, should not be accepted as true since Congress has found such notices to be presumptively illegitimate. *See* 22 U.S.C. § 263b(a) ("It is the sense of Congress that some INTERPOL member countries have repeatedly misused INTERPOL's databases and processes, including Notice and Diffusion mechanisms, to conduct activities of an overtly political or other unlawful character and in violation of international human rights standards, including by making requests to harass or persecute political opponents, human rights defenders, or journalists."). The Court should disregard Respondents' derogatory gloss on the well-pleaded facts of this case.

might apply to those, like Plaintiffs, with bona fide asylum claims and who desire to remain in the United States."). Thus, Respondents' reliance on *Keo* is misplaced because *Demore*, on which *Keo* is substantially based, found that § 1226(c)'s "'narrow' detention policy 'during the limited period' necessary to arrange for removal was reasonably related to the government's purpose of effectuating removal and protecting public safety for reasons that do not apply here." *Padilla v. Immigr. & Customs Enf't*, 953 F.3d 1134, 1144 (9th Cir. 2020) (quoting *Demore*, 538 U.S. at 526-28), *cert. granted, judgment vacated*, 141 S. Ct. 1041 (2021); *see also Doe v. Becerra*, 2025 WL 691664, at *4-5.

Neither in this case nor elsewhere have Respondents offered evidence that the congressional goals regarding noncitizens detained under § 1226(c) expressed in *Demore* apply to asylum seekers detained under § 1225(b)(1)(B)(2). On this basis alone, this Court should decline to import *Keo*'s interpretation of *Demore* to Petitioner.

2. Ample Ninth Circuit law demonstrating that due process requires a bond hearing once immigration detention lasts longer than six months is absent from the *Keo* decision.

Respondents brief does not even cite, let alone grapple with the Ninth Circuit case law describing six months of detention without a bond hearing as "prolonged" and "raising serious constitutional concerns." *See, e.g., 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[.]"), *abrogated on other grounds as recognized by Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1201 (9th Cir. 2022); *Rodriguez v. Robbins*, 804 F.3d 1060, 1069 (9th Cir. 2015) (applying *Diouf*), *rev'd on other grounds sub nom. Jennings v. Rodriguez*, 583 U.S. 281 (2018). Instead, Respondents shadowbox with this authority by arguing that *Jennings v. Rodriguez* overruled this precedent. *See* Mot. at 3-4. But Respondents fail to apprehend that *Jennings* was a statutory-interpretation decision and did indeed leave open the constitutional question at issue here. Specifically, *Jennings* reversed the

Ninth Circuit's holding that a six-month time limit on no-bail detention was "implicit" in the text of § 1226(c). *Jennings v. Rodriguez*, 138 S. Ct. 830, 846, 851 (2018); *German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 209–10 (3d Cir. 2020) (holding that after *Demore* and *Jennings*, petitioners detained pursuant to § 1226(c) can still bring as-applied *constitutional* challenges to their detention and that due process affords them a bond hearing once detention becomes unreasonable); *Lopez*, 631 F. Supp. 3d at 873, 877. *Jennings* did not, as Respondents suggest, upend Ninth Circuit precedent regarding the constitutional dubiousness of immigration detention without a bond hearing beyond a six-month timeframe. *See Sajous v. Decker*, No. 18-cv-2447, 2018 WL 2357266, at *2 (S.D.N.Y. May 23, 2018) ("*Jennings* took no position on this constitutional analysis.").

Respondents also omit what came after *Jennings*. *Jennings* remanded proceedings to the Ninth Circuit to decide the full constitutional merits on a class-wide basis of noncitizens detained without a bond hearing for more than six months. *Jennings*, 138 S. Ct. at 851. Though the Ninth Circuit then further remanded the issue to the district court, it expressed "grave doubts" that due process permits no-bail detention that goes beyond six months. *Rodriguez v. Marin*, 909 F.3d 252, 255, 256 (9th Cir. 2018). After *Jennings*, many courts nationwide have ordered bond hearings to noncitizens detained for more than six months without a bond hearing. *See, e.g., Perera v. Jennings*, No. 21-cv-04136-BLF, 2021 WL 2400981 (N.D. Cal. June 11, 2021) (petitioner detained almost two months); *Sajous*, 2018 WL 2357266, at *1, 11 (eight months); *Jarpa v. Mumford*, 211 F. Supp. 3d 706, 710, 717 n.6 (D. Md. 2016) (eleven months).

Respondents' disregard of Ninth Circuit precedent and misinterpretation of *Jennings* leads them to the extreme conclusion that as long as removal proceedings are ongoing, "detention is *per se* constitutional, and the § 2241 petition must be denied." Mot. at 6. In other words, in Respondents' view, it does not matter how long ICE detains noncitizens without having to prove

that they pose a danger or flight risk. That position echoes *Keo*, which found that so long as the petitioner's detention was "not indefinite" and removal proceedings would likely conclude at some point, there was no due process issue with petitioner's 22-month detention without a bond hearing. In addition to not addressing *Marin*, *Diouf*, and others, *Keo* reached this categorical test by adopting the reasoning in a concurring opinion to *Martinez v. Clark*, 124 F.4th 775, 787 (9th Cir. 2024). 2025 WL 1029392, at *6-7 ("The Court finds the concurring opinion of Judge Bumatay in *Martinez v. Clark*, particularly instructive and convincing as to this issue."). But the *Martinez* concurrence itself acknowledged that duration of detention matters under Ninth Circuit law, arguing that "we [i.e. the Ninth Circuit] should change it." *Martinez*, 124 F.4th at 787-91.[4]

Unless and until the Ninth Circuit adopts the change proposed by Judge Bumatay's concurrence, this Court must apply existing Ninth Circuit law holding that prolonged detention raises grave due process concerns. "A district court bound by circuit authority ... has no choice but to follow it, even if convinced that such authority was wrongly decided." *Hart v. Massanari*, 266 F.3d 1155, 1175 (9th Cir. 2001). Neither Respondents nor the court in *Keo* follow Ninth Circuit law regarding the due process right to a bond hearing for noncitizens detained for prolonged periods of time. *See also Jackson v. Indiana*, 406 U.S. 715, 738 (1972) (explaining "due process requires that the nature and *duration* of [civil] commitment bear some reasonable relation to the purpose for which the individual is committed" (emphasis added). This Court should follow the Ninth Circuit's due process holdings that as duration grows, detention without a bond hearing raises serious constitutional concerns.

[4] The concurrence described the Ninth Circuit's most recent ruling in *Marin* as "dicta," *id.* at 788, which it was not, but even if it was, "[w]ell-reasoned dicta is the law of the circuit." *United States v. Johnson*, 256 F.3d 895, 914 (9th Cir. 2001) (*en banc*); *Enying Li v. Holder*, 738 F.3d 1160, 1172 n. 2 (9th Cir. 2013).

3. The Ninth Circuit's expression of "grave doubts" that unreasonably long detention periods may violate due process warrants case-specific interest balancing.

Balancing interests when depriving a noncitizen of their physical freedom is not a "slippery slope," as Respondents suggest. Mot at 5. "When government action depriving a person of life, liberty, or property survives substantive due process scrutiny, it must still be implemented *in a fair manner*." *United States v. Salerno*, 481 U.S. 739, 746 (1987) (emphasis added). Indeed, in *Rodriguez Diaz v. Garland*, when deciding whether "the essential standard of fairness under the Due Process Clause" permitted the government to not provide an immigration habeas petitioner a second bond hearing, the court rejected the government's "framework that focuses more exclusively on the government's asserted interests in detaining [noncitizens] who are subject to removal." 53 F.4th 1189, 1206, 1213 (9th Cir. 2022) (internal quotation marks omitted). The court balanced the Petitioner's interests against the government's by applying the *Mathews* test. *Id.* at 1207.

Courts in this District routinely apply the *Mathews* factors to determine whether due process requires a bond hearing in a particular immigration detention case. *E.g.*, *Eliazar*, 2025 WL 711190; *Diep v. Wofford*, 2025 WL 604744; *Lopez*, 631 F. Supp. 3d; *see also Hilario M.R.*, 2025 WL 1158841, at *7-9. Respondents cannot deny that courts across this Circuit consistently balance interests to evaluate procedural due process challenges to prolonged immigration detention. *See Rodriguez Diaz*, 53 F.4th at 1207.

Nor does the Eighth Circuit's statement that "*Zadvydas* and *Demore* have already done whatever balancing is necessary," *Keo*, 2025 WL 1029392, at *6 (quoting *Banyee v. Garland*, 115 4th 928, 931, 933 (8th Cir. 2024)), apply here, because those cases did not purport to balance the liberty interests of noncitizens like Petitioner detained under § 1225(b)(1)(B)(2). *See supra* Section (A)(1); *Zadvydas v. Davis*, 533 U.S. 678, 700-01 (2001) (holding that six months was a

"presumptively reasonable period of detention" under § 1231(a)(6) for individuals already ordered removed). Ninth Circuit law postdating *Demore* and *Zadvydas* precludes the government's ability to end any procedural due process challenge to prolonged detention by simply asking "are deportation proceedings ongoing?" Mot. at 6; *see Rodriguez Diaz*, 53 F.4th at 1206-10.

B. On balance, due process entitles Petitioner to a bond hearing.

"[D]ue 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.'" *Prieto-Romero v. Clark*, 534 F.3d 1053, 1065 (9th Cir. 2008) (quoting *Zadvydas*, 533 U.S. at 690-91). "A well-established line of cases in [the Ninth] Circuit has applied this due process guarantee to prolonged immigration detentions without a custody hearing." *Masood v. Barr*, No. 19-cv-07623, 2020 WL 95633, at *3 (N.D. Cal. Jan. 8, 2020). The *Mathews* test "remains a flexible test" that this Court may use to order a bond hearing on procedural due process grounds. *See Rodriguez Diaz*, F.4th at 1206; *see also Zagal-Alcaraz v. ICE Field Off.*, No. 3:19-cv-01358-SB, 2020 WL 1862254, at *3–4 (D. Or. Mar. 25, 2020) (collecting cases that apply *Mathews*). Examining the three prongs of the *Mathews* test, Petitioner is entitled to a bond hearing.

1. Petitioner has a substantial interest in not being imprisoned without a hearing.

Petitioner provided concrete contours of his private liberty interests that weigh in favor of this Court ordering a bond hearing, which Respondents either downplayed or did not even attempt to rebut.[5] For example, Petitioner plausibly alleged that his now ten-month "confinement is likely

[5] Respondents also misrepresent the Petition: "Petitioner falsely claims that his private interests are heightened in part due to supposed family concerns (which family Petitioner abandoned in his country of origin)[.]" Mot. at 7. Petitioner never alleged that his liberty interests are linked to "family concerns." *See generally* Petition at ¶¶ 61-61. Nor did Petitioner "abandon[]" his family

to continue for many more months, if not years." Petition at ¶ 61. Respondents do not contest this forecast that Petitioner's detention will endure without any specific date of cessation. *See* Mot. at 7. This "arbitrary prolonged detention without any constitutional process" is exactly the subject of the Ninth Circuit's "grave doubts[.]" *See Marin*, 909 F.3d at 256.

Petitioner also detailed "pest-infested meals, unredressed sexual harassment, and antagonism from guards," in addition to Golden State Annex's failure to meet his medical needs that inform his interest to be free. Petition at ¶¶ 29-38, 62. This goes beyond even the general freedom from imprisonment which "lies at the heart of liberty." *Zadvydas*, 533 U.S. at 690, 693. Instead of addressing the facts, Respondents complain that Petitioner has "high standards and expectations[.]" Mot. at 7. In more under-rug sweeping, Respondents try to dispose of these allegations by arguing that they raise a conditions-of-confinement claim that should be brought as a civil rights action. *Id.* But "the 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. Whether or not conditions are inherently punitive when compared to other forms of detention like post-conviction imprisonment, harsh conditions multiply the burden on liberty for any given period." *Doe v. Becerra*, 732 F. Supp. 3d 1071, 1089 (N.D. Cal. 2024); *see also Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (emphasizing the increased importance of other procedural protections, such as an additional bond hearing, when a detainee is "incarcerated under conditions indistinguishable from those imposed on criminal defendants sent to prison following convictions for violent felonies and other serious crimes.").

The Court should give Petitioner's liberty interests the weight they are due.

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as Respondents pejoratively paint his life-or-death decision to flee persecution directed at him personally Belize. *See* Petition at ¶¶ 18-25.

2. Respondents concede that ICE's discretionary parole system does not comport with due process.

Respondents altogether fail to address the probable value of an individualized determination of flight risk and dangerousness in reducing the risk of erroneous deprivation of Petitioner's liberty. *See* Mot. at 6-7. Instead, Respondents summarily argue that due process has been served by the single ICE-controlled, discretionary parole review that denied Petitioner's release almost five months ago on December 19, 2024. Mot. at 3. The Ninth Circuit has already rejected this argument: "the discretionary parole system available to § 1225(b) detainees is not sufficient to overcome the constitutional concerns raised by prolonged mandatory detention." *Robbins*, 715 F.3d at 1144. The Court can thus find that the second *Mathews* factor weighs in Petitioner's favor on this ground alone.

Even if this conclusory argument remained available to Respondents, it would still fail as a matter of due process because the parole process is one-sided in that it "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; *see also Masood*, 2020 WL 95633, at *4 (finding parole process "was hardly an 'opportunity to be heard at a meaningful time and in a meaningful manner'") (internal citation omitted). Respondents admit this is the case. Mot. at 3 ("DHS *may, in its discretion*, parole some aliens into the United States for urgent humanitarian reasons or a significant public benefit") (emphasis added). In doing so, Respondents concede that the parole system violates due process, which 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); *Singh v. Barr*, 400 F. Supp. 3d 1005 (S.D. Cal. 2019).

The ICE parole process, as Respondents describe it, and as Petitioner experienced it, *see* Petition ¶¶ 66-68, does not satisfy the requirements of the Due Process Clause. Therefore, the *Mathews* factor which considers the probable value of a neutrally adjudicated bond hearing falls to Petitioner's side.

3. Petitioner's exercises of his statutory rights are not "delay tactics."

Respondents improperly describe Petitioner's "application for relief from removal" as his "own delaying tactics and Immigration Court demands." Mot. at 7. Respondents essentially argue that Petitioner is at fault for his prolonged detention because he applied for asylum. Respondents do not—and cannot—dispute Petitioner's right to petition for asylum, and any suggestion that Petitioner's detention is justified simply because he is seeking asylum runs afoul of the law. *See Masood*, 2020 WL 95633, at *3 ("[I]t ill suits the United States to suggest that" Petitioner could have shortened his detention by "giving up" his legal right to pursue relief from removal).

Nor do Petitioner's *pro se* appearances at his master calendar hearings constitute delay. Though Petitioner has been in immigration proceedings since August 14, 2024, Petitioner did not secure *pro bono* immigration counsel to represent him until January 13, 2025. ECF 1-1 at ¶ 2. Respondents' declarant thus implausibly claims that "[o]n October 16, 2024, Petitioner appeared at his second master calendar hearing *at which his attorney asked for additional time to prepare*." ECF 10-1 ¶ 7. Further in contradiction to Respondents' accusation of delay that "On December 11, 2024 . . . Petitioner had not completed his applications for relief[,]" ECF 10-1 ¶ 12, "Petitioner completed his I-589 Application for Asylum on September 20, 2024, and filed it shortly thereafter. Petitioner subsequently mailed his asylum application to the immigration court, which the

Immigration Judge received on December 11, 2024." ECF 1-1 ¶ 7. Respondents' claims that Petitioner has delayed his proceedings are unsupported.

Even assuming some delay is attributable to Petitioner, "the fact that Petitioner chose to pursue [an application for relief] and requested continuances to further that application does not deprive him of a constitutional right to due process." *Henriquez v. Garland*, No. 5:22-cv-00869-EJD, 2022 WL 2132919, at *5 (N.D. Cal. June 14, 2022), *appeal dismissed*, 2022 WL 18587903 (9th Cir. 2022). Absent any evidence that Petitioner has purposefully delayed proceedings for some reason other than good-faith pursuit of his asylum case (which he has not), his alleged requests for more time do not weigh against a bond hearing. *See Hernandez Gomez v. Becerra*, No. 23-cv-01330-WHO, 2023 WL 2802230, at *4 (N.D. Cal. Apr. 4, 2023) ("The period of those [extension] requests and their admitted purpose do not demonstrate any purposeful intent to delay by [Petitioner.]"); *Martinez Leiva v. Becerra*, No. 23-cv-02027-CRB, 2023 WL 3688097, at *8 (N.D. Cal. May 26, 2023).

The Court should reject the government's argument that Petitioner's pursuit of asylum counts against his liberty interests.

4. Respondents have not shown that a bond hearing would harm their interests.

Respondents articulated asserted no specific interests for detaining Petitioner, specifically, or noncitizens under § 1225(b)(1)(B)(2) without a bond hearing generally. Instead, Respondents' sole argument to support its interests in detaining Petitioner is that "[i]n *Demore*, the Supreme Court recognized government interests justifiably concerned that deportable aliens who are not detained may engage in crime and fail to appear for their removal hearings." Mot. at 6-7. But this overstates *Demore*'s reach. *Demore* was only concerned with "limited class" of noncitizens detained under 8 U.S.C. § 1226(c), who are detained in civil immigration detention following release from criminal custody in the United States due to "criminal convictions that were secured

following full procedural protections." *Demore*, 539 U.S. at 518, n. 9. That was the only population for which there was evidence before Congress that detention would better ensure public safety and court appearances. *Id.* at 518-21, 528. Petitioner has not been convicted of any crime in the United States or Belize, petition ¶ 1, and, as Respondents admit, he is not subject to § 1226(c) detention. Mot. at 2. Therefore, Respondents' reliance on *Demore* to substantiate their interests in detaining Petitioner, who ICE purports to detain pending adjudication of his asylum claim and for no other reason, is misplaced.

While the government may claim an interest in using detention to ensure noncitizens' appearance in court or to protect public safety, it has "no legitimate interest" in detaining individuals who are not a danger or flight risk. *See Hernandez v. Sessions*, 872 F.3d 994, 990-91 (9th Cir. 2017). In other words, "the key government interest at stake here 'is not the continued detention of Petitioner, but the government's ability to detain him without a bond hearing.'" *Diep*, 2025 WL 604744 at * 5; *see also Zerezghi v. U.S. Citizenship & Immigr. Servs.*, 955 F.3d 802, 810 (9th Cir. 2020) (noting that "the question [under the third *Mathews* factor] is not the government's interest in immigration enforcement" "in general"). Respondents fail to contest and thus concede that a bond hearing imposes minimal cost on the government. *See* Mot. at 6-7.[6]

The balance of the competing interests strongly weighs in favor of Petitioner; therefore, the Court should order a bond hearing. Finally, because the government does not contest the standards that Petitioner explained are required for the bond hearing to comport with due process,

[6] In fact, the government incurs great cost detaining noncitizens. *See* Mary Holper, *Discretionary Immigration Detention*, 74 Duke L.J. 961, 982 (2025) ("The government squanders the opportunity to benefit from a detainee's contributions to society, spending roughly $165 per day to do so."); *see also Black v. Decker*, 104 F.4th 133, 154 (2d Cir. 2024) ("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.").

see Mot. at 5-8, the Court should require that the government bear the burden of proving Petitioner's flight risk or danger by a clear and convincing evidence standard, and that the immigration court consider alternatives to detention and Petitioner's ability to pay. Petition ¶¶ 76-78.

CONCLUSION

For the foregoing reasons, this Court should deny Respondents' Motion to Dismiss and order Respondents to hold a hearing before an immigration judge who considers whether the government can establish, by clear and convincing evidence, that Petitioner presents a risk of flight or danger that cannot be adequately mitigated by alternatives restraints short of detention, and that takes into account Petitioner's ability to pay a monetary bond.

Dated: May 7, 2025 By: */s/ Victoria Petty*
Victoria Petty

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