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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**

TABLE OF CONTENTS

INTRODUCTION	1
ARGUMENT	2
A. <i>Keo v. Warden-Mesa Verde ICE Processing Center</i> does not apply to this case and was wrongly decided.....	3
1. Petitioner here is detained under a materially different statute.	3
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 <i>Keo</i> decision.....	5
3. The Ninth Circuit’s expression of “grave doubts” that unreasonably long detention periods may violate due process warrants case-specific interest balancing.	8
B. On balance, due process entitles Petitioner to a bond hearing.	9
1. Petitioner has a substantial interest in not being imprisoned without a hearing. ..	9
2. Respondents concede that ICE’s discretionary parole system does not comport with due process.....	11
3. Petitioner’s exercises of his statutory rights are not “delay tactics.”	12
4. Respondents have not shown that a bond hearing would harm their interests.	13
CONCLUSION.....	15

TABLE OF AUTHORITIES

Cases

<i>Banyee v. Garland</i> , 115 4th 928 (8th Cir. 2024)	8
<i>Black v. Decker</i> , 104 F.4th 133 (2d Cir. 2024)	15
<i>Demore v. Kim</i> , 538 U.S. 510 (2003)	3, 4, 14
<i>Diep v. Wofford</i> , 2025 WL 604744 (E.D. Cal. Feb. 25, 2025)	2, 8, 14
<i>Diouf v. Napolitano</i> , 634 F.3d 1081 (9th Cir. 2011)	5
<i>Doe v. Becerra</i> , 732 F. Supp. 3d 1071 (N.D. Cal. 2024)	10
<i>Doe v. Becerra</i> , 2025 WL 691664 (E.D. Cal. Mar. 3, 2025)	2, 5
<i>Eliazar v. Wofford</i> , 2025 WL 711190 (E.D. Cal. Mar. 5, 2025)	2, 8
<i>Enying Li v. Holder</i> , 738 F.3d 1160 (9th Cir. 2013)	7
<i>German Santos v. Warden Pike Cnty. Corr. Facility</i> , 965 F.3d 203 (3d Cir. 2020)	6
<i>Hart v. Massanari</i> , 266 F.3d 1155 (9th Cir. 2001)	7
<i>Henriquez v. Garland</i> , 2022 WL 2132919 (N.D. Cal. June 14, 2022)	13
<i>Hernandez Gomez v. Becerra</i> , 2023 WL 2802230 (N.D. Cal. Apr. 4, 2023)	13
<i>Hernandez v. Sessions</i> , 872 F.3d 994 (9th Cir. 2017)	14
<i>Hilario M.R. v. Warden, Mesa Verde</i> , 2025 WL 1158841 (E.D. Cal. Apr. 21, 2025)	2, 8
<i>Ixchop Perez v. McAleenan</i> , 435 F. Supp. 3d 1055 (N.D. Cal. 2020)	12
<i>Jackson v. Indiana</i> , 406 U.S. 715 (1972)	7
<i>Jarpa v. Mumford</i> , 211 F. Supp. 3d 706 (D. Md. 2016)	6
<i>Jennings v. Rodriguez</i> , 138 S. Ct. 830 (2018)	6
<i>Jennings v. Rodriguez</i> , 583 U.S. 281 (2018)	5
<i>Keo v. Warden-Mesa Verde</i> , 2025 WL 1029392 (E.D. Cal. Apr. 7, 2025)	passim

1	<i>Lopez v. Garland</i> , 631 F. Supp. 3d 870 (E.D. Cal. Sept. 29, 2022).....	2, 6, 8
2	<i>Martinez Leiva v. Becerra</i> , 2023 WL 3688097 (N.D. Cal. May 26, 2023).....	13
3	<i>Martinez v. Clark</i> , 124 F.4th 775 (9th Cir. 2024).....	7
4	<i>Masood v. Barr</i> , 2020 WL 95633 (N.D. Cal. Jan. 8, 2020).....	9, 11, 12
5	<i>Mathews v. Eldridge</i> , 424 U.S. 319 (1976).....	2
6	<i>Padilla v. Immigr. & Customs Enf't</i> , 953 F.3d 1134 (9th Cir. 2020).....	5
7	<i>Padilla v. U.S. Immigr. & Customs Enf't</i> , 704 F. Supp. 3d 1163 (W.D. Wash. 2023).....	5, 11
8	<i>Perera v. Jennings</i> , 2021 WL 2400981 (N.D. Cal. June 11, 2021).....	6
9	<i>Prieto-Romero v. Clark</i> , 534 F.3d 1053, 1065 (9th Cir. 2008).....	9
10	<i>Rodriguez Diaz v. Garland</i> , 53 F.4th 1189 (9th Cir. 2022).....	5, 8, 9
11	<i>Rodriguez v. Marin</i> , 909 F.3d 252 (9th Cir. 2018).....	6, 10
12	<i>Rodriguez v. Robbins</i> , 804 F.3d 1060 (9th Cir. 2015).....	5, 11
13	<i>Sajous v. Decker</i> , 2018 WL 2357266 (S.D.N.Y. May 23, 2018).....	6
14	<i>Singh v. Barr</i> , 400 F. Supp. 3d 1005 (S.D. Cal. 2019).....	12
15	<i>Singh v. Holder</i> , 638 F.3d 1196 (9th Cir. 2011).....	12
16	<i>United States v. Johnson</i> , 256 F.3d 895 (9th Cir. 2001).....	7
17	<i>United States v. Salerno</i> , 481 U.S. 739 (1987).....	8
18	<i>Velasco Lopez v. Decker</i> , 978 F.3d 842 (2d Cir. 2020).....	10
19	<i>Zadvydas v. Davis</i> , 533 U.S. 678 (2001).....	9, 10
20	<i>Zagal-Alcaraz v. ICE Field Off.</i> , 2020 WL 1862254 (D. Or. Mar. 25, 2020).....	9
21	<i>Zerezghi v. U.S. Citizenship & Immigr. Servs.</i> , 955 F.3d 802 (9th Cir. 2020).....	14
22	Statutes	
23	22 U.S.C. § 263b(a).....	4
24	28 U.S.C. § 2243.....	1

1 8 U.S.C. § 1226(c) 3

2 8 U.S.C. 1225(b)(1)(B)(2) 3

3
4 **Other Authorities**

5 Mary Holper, *Discretionary Immigration Detention*, 74 Duke L.J. 961, 982 (2025) 14

INTRODUCTION

Respondents' return¹ 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 seeker² 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

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.

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

10
11 Respondents' submission casts no doubt that Petitioner's as-yet unprotected liberty
12 interests warrant a bond hearing as a matter of due process. Therefore, this Court should grant the
13 Petition.
14

15 ARGUMENT

16 Respondents pose two alternative arguments for why the Petition should be denied, neither
17 of which succeeds. **First**, Respondents first invite the Court to adopt the reasoning from *Keo v.*
18 *Warden-Mesa Verde ICE Processing Center*, a decision in a *pro se* case that departed from the
19 consensus of district court judges in this Circuit, by denying a noncitizen's procedural due process
20 challenge to his 22-month long detention simply because his removal proceedings were ongoing.
21 Mot. at 5-6 (citing 2025 WL 1029392, at *8). *Keo* does not, by its own terms, apply to Petitioner
22 here. But if the Court finds otherwise, Petitioner respectfully asks that the Court decline to follow
23 *Keo*, as the decision does not properly apply Ninth Circuit law. **Second**, Respondents use the
24 framework from *Mathews v. Eldridge*, 424 U.S. 319 (1976) to repackage their first argument.
25 Respondents argue that no daylight exists between the government goals upheld in *Demore v. Kim*,
26 538 U.S. 510 (2003) and the need to detain Petitioner, and that those goals are too "strong" to be
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1 outweighed by any liberty interest Petitioner holds, no matter how long he remains confined. But
2 *Demore* offers no shelter for Respondents' position, as this District and others have consistently
3 held. This Court should reject Respondents' misinterpretation of precedent and instead hold that
4 Petitioner's interest in procedural safeguards to ensure that his ongoing deprivation of liberty is
5 justified.
6

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

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

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

16 Putting aside whether *Keo*'s reasoning is correct (which, as explained *infra*, it is not), *Keo*
17 does not translate to due process challenges brought by noncitizens detained under 8 U.S.C. §
18 1225(b)(1)(B)(2) following demonstration before an asylum officer that they have a credible fear
19 of persecution in their country of origin. The petitioner in *Keo* was detained for 22 months without
20 a bond hearing by ICE under 8 U.S.C. § 1226(c), the INA provision which states that DHS "shall
21 take into custody" any noncitizen who is "inadmissible" or "deportable" by reason of having
22 committed certain enumerated criminal offenses. 2025 WL 1029392, at *3-4 (quoting § 1226(c)).
23 *Keo* emphasized the Supreme Court's decision in *Demore*, which rejected a facial challenge to
24 mandatory detention of lawful permanent residents under § 1226(c) due to evidence that "Congress
25 drafted § 1226(c) to respond to the increasing rates of crime and failure to appear for removal
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1 hearings *among removable noncitizens convicted of certain crimes.*” *Id.* at *5 (citing 538 U.S. at
2 518-21) (emphasis added). Because removal proceedings were ongoing, the court held that
3 *Demore* precluded any further inquiry into the reasonableness of the detention on procedural due
4 process grounds. *Id.* at *7 (“Petitioner’s continued detention serve[d] the purported immigration
5 purpose” described in *Demore*). In other words, *Keo* held that Congress’s goals as described in
6 *Demore* applied to the petitioner before it. *See id.* at *7-8.

8 But the statistics and congressional concerns in *Demore* do not apply to all noncitizens
9 facing removal, and certainly not to asylum seekers without criminal convictions. It is undisputed
10 that Petitioner is detained under 1225(b)(1)(B)(ii), which states that if a noncitizen is originally
11 placed in expedited removal proceedings but subsequently establishes a credible fear before an
12 asylum officer, the noncitizen “shall be detained for further consideration of the application for
13 asylum.”³ *Accord* Mot. at 2 (“Petitioner is subject to mandatory detention under 8 U.S.C. §
14 1225(b)(1)(B)(ii)”). Unlike in *Demore*, the government has put forth no empirical evidence—let
15 alone evidence forming the basis of a narrowly targeted congressional enactment—that detaining
16 asylum seekers is necessary to protect the community or ensure appearance in immigration court.
17 *See* Mot. at 3-6; *see also Padilla v. U.S. Immigr. & Customs Enf’t*, 704 F. Supp. 3d 1163, 1173
18 (W.D. Wash. 2023) (“Defendants can point to no similar public safety concerns or flight risk that
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22 ³ Petitioner is not detained, as Respondents misleadingly suggest, for criminal conduct. *See* Mot.
23 at 6. Nor is Petitioner “fleeing crimes in his country of origin.” *See id.* Petitioner has not been
24 convicted of any crime in Belize or the United States and was forced to flee Belize because of
25 political persecution. Petition at ¶ 1, 25. Further, the INTERPOL notice that Respondents attach,
26 ECF 10-1 Ex. 10, should not be accepted as true since Congress has found such notices to be
27 presumptively illegitimate. *See* 22 U.S.C. § 263b(a) (“It is the sense of Congress that some
28 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.

1 might apply to those, like Plaintiffs, with bona fide asylum claims and who desire to remain in the
 2 United States.”). Thus, Respondents’ reliance on *Keo* is misplaced because *Demore*, on which
 3 *Keo* is substantially based, found that § 1226(c)’s “‘narrow’ detention policy ‘during the limited
 4 period’ necessary to arrange for removal was reasonably related to the government’s purpose of
 5 effectuating removal and protecting public safety for reasons that do not apply here.” *Padilla v.*
 6 *Immigr. & Customs Enft*, 953 F.3d 1134, 1144 (9th Cir. 2020) (quoting *Demore*, 538 U.S. at 526-
 7 28), *cert. granted, judgment vacated*, 141 S. Ct. 1041 (2021); *see also Doe v. Becerra*, 2025 WL
 8 691664, at *4-5.

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

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

17 Respondents brief does not even cite, let alone grapple with the Ninth Circuit case law
 18 describing six months of detention without a bond hearing as “prolonged” and “raising serious
 19 constitutional concerns.” *See, e.g., Diouf v. Napolitano*, 634 F.3d 1081, 1091-92 & n.13 (9th Cir.
 20 2011) (“As a general matter, detention is prolonged when it has lasted six months[.]”), *abrogated*
 21 *on other grounds as recognized by Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1201 (9th Cir.
 22 2022); *Rodriguez v. Robbins*, 804 F.3d 1060, 1069 (9th Cir. 2015) (applying *Diouf*), *rev’d on other*
 23 *grounds sub nom. Jennings v. Rodriguez*, 583 U.S. 281 (2018). Instead, Respondents shadowbox
 24 with this authority by arguing that *Jennings v. Rodriguez* overruled this precedent. *See* Mot. at 3-
 25 4. But Respondents fail to apprehend that *Jennings* was a statutory-interpretation decision and did
 26 indeed leave open the constitutional question at issue here. Specifically, *Jennings* reversed the
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1 Ninth Circuit's holding that a six-month time limit on no-bail detention was "implicit" in the text
2 of § 1226(c). *Jennings v. Rodriguez*, 138 S. Ct. 830, 846, 851 (2018); *German Santos v. Warden*
3 *Pike Cnty. Corr. Facility*, 965 F.3d 203, 209–10 (3d Cir. 2020) (holding that after *Demore* and
4 *Jennings*, petitioners detained pursuant to § 1226(c) can still bring as-applied constitutional
5 challenges to their detention and that due process affords them a bond hearing once detention
6 becomes unreasonable); *Lopez*, 631 F. Supp. 3d at 873, 877. *Jennings* did not, as Respondents
7 suggest, upend Ninth Circuit precedent regarding the constitutional dubiousness of immigration
8 detention without a bond hearing beyond a six-month timeframe. *See Sajous v. Decker*, No. 18-
9 cv-2447, 2018 WL 2357266, at *2 (S.D.N.Y. May 23, 2018) ("*Jennings* took no position on this
10 constitutional analysis.").

11
12 Respondents also omit what came after *Jennings*. *Jennings* remanded proceedings to the
13 Ninth Circuit to decide the full constitutional merits on a class-wide basis of noncitizens detained
14 without a bond hearing for more than six months. *Jennings*, 138 S. Ct. at 851. Though the Ninth
15 Circuit then further remanded the issue to the district court, it expressed "grave doubts" that due
16 process permits no-bail detention that goes beyond six months. *Rodriguez v. Marin*, 909 F.3d 252,
17 255, 256 (9th Cir. 2018). After *Jennings*, many courts nationwide have ordered bond hearings to
18 noncitizens detained for more than six months without a bond hearing. *See, e.g., Perera v.*
19 *Jennings*, No. 21-cv-04136-BLF, 2021 WL 2400981 (N.D. Cal. June 11, 2021) (petitioner detained
20 almost two months); *Sajous*, 2018 WL 2357266, at *1, 11 (eight months); *Jarpa v. Mumford*, 211
21 F. Supp. 3d 706, 710, 717 n.6 (D. Md. 2016) (eleven months).

22
23 Respondents' disregard of Ninth Circuit precedent and misinterpretation of *Jennings* leads
24 them to the extreme conclusion that as long as removal proceedings are ongoing, "detention is *per*
25 *se* constitutional, and the § 2241 petition must be denied." Mot. at 6. In other words, in
26 Respondents' view, it does not matter how long ICE detains noncitizens without having to prove
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1 that they pose a danger or flight risk. That position echoes *Keo*, which found that so long as the
2 petitioner's detention was "not indefinite" and removal proceedings would likely conclude at some
3 point, there was no due process issue with petitioner's 22-month detention without a bond hearing.
4 In addition to not addressing *Marin*, *Diouf*, and others, *Keo* reached this categorical test by
5 adopting the reasoning in a concurring opinion to *Martinez v. Clark*, 124 F.4th 775, 787 (9th Cir.
6 2024). 2025 WL 1029392, at *6-7 ("The Court finds the concurring opinion of Judge Bumatay in
7 *Martinez v. Clark*, particularly instructive and convincing as to this issue."). But the *Martinez*
8 concurrence itself acknowledged that duration of detention matters under Ninth Circuit law,
9 arguing that "we [i.e. the Ninth Circuit] should change it." *Martinez*, 124 F.4th at 787-91.⁴

11 Unless and until the Ninth Circuit adopts the change proposed by Judge Bumatay's
12 concurrence, this Court must apply existing Ninth Circuit law holding that prolonged detention
13 raises grave due process concerns. "A district court bound by circuit authority ... has no choice
14 but to follow it, even if convinced that such authority was wrongly decided." *Hart v. Massanari*,
15 266 F.3d 1155, 1175 (9th Cir. 2001). Neither Respondents nor the court in *Keo* follow Ninth
16 Circuit law regarding the due process right to a bond hearing for noncitizens detained for prolonged
17 periods of time. *See also Jackson v. Indiana*, 406 U.S. 715, 738 (1972) (explaining "due process
18 requires that the nature and *duration* of [civil] commitment bear some reasonable relation to the
19 purpose for which the individual is committed" (emphasis added)). This Court should follow the
20 Ninth Circuit's due process holdings that as duration grows, detention without a bond hearing
21 raises serious constitutional concerns.

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26 ⁴ The concurrence described the Ninth Circuit's most recent ruling in *Marin* as "dicta," *id.* at 788,
27 which it was not, but even if it was, "[w]ell-reasoned dicta is the law of the circuit." *United States*
28 *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

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

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

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24 The Court should give Petitioner’s liberty interests the weight they are due.
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28 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

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

3 Even assuming some delay is attributable to Petitioner, “the fact that Petitioner chose to
4 pursue [an application for relief] and requested continuances to further that application does not
5 deprive him of a constitutional right to due process.” *Henriquez v. Garland*, No. 5:22-cv-00869-
6 EJD, 2022 WL 2132919, at *5 (N.D. Cal. June 14, 2022), *appeal dismissed*, 2022 WL 18587903
7 (9th Cir. 2022). Absent any evidence that Petitioner has purposefully delayed proceedings for
8 some reason other than good-faith pursuit of his asylum case (which he has not), his alleged
9 requests for more time do not weigh against a bond hearing. *See Hernandez Gomez v. Becerra*,
10 No. 23-cv-01330-WHO, 2023 WL 2802230, at *4 (N.D. Cal. Apr. 4, 2023) (“The period of those
11 [extension] requests and their admitted purpose do not demonstrate any purposeful intent to delay
12 by [Petitioner.]”); *Martinez Leiva v. Becerra*, No. 23-cv-02027-CRB, 2023 WL 3688097, at *8
13 (N.D. Cal. May 26, 2023).

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

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

19 Respondents articulated asserted no specific interests for detaining Petitioner, specifically,
20 or noncitizens under § 1225(b)(1)(B)(2) without a bond hearing generally. Instead, Respondents’
21 sole argument to support its interests in detaining Petitioner is that “[i]n *Demore*, the Supreme
22 Court recognized government interests justifiably concerned that deportable aliens who are not
23 detained may engage in crime and fail to appear for their removal hearings.” Mot. at 6-7. But this
24 overstates *Demore*’s reach. *Demore* was only concerned with “limited class” of noncitizens
25 detained under 8 U.S.C. § 1226(c), who are detained in civil immigration detention following
26 release from criminal custody in the United States due to “criminal convictions that were secured
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1 following full procedural protections.” *Demore*, 539 U.S. at 518, n. 9. That was the only
2 population for which there was evidence before Congress that detention would better ensure public
3 safety and court appearances. *Id.* at 518-21, 528. Petitioner has not been convicted of any crime
4 in the United States or Belize, petition ¶ 1, and, as Respondents admit, he is not subject to § 1226(c)
5 detention. Mot. at 2. Therefore, Respondents’ reliance on *Demore* to substantiate their interests
6 in detaining Petitioner, who ICE purports to detain pending adjudication of his asylum claim and
7 for no other reason, is misplaced.

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9 While the government may claim an interest in using detention to ensure noncitizens’
10 appearance in court or to protect public safety, it has “no legitimate interest” in detaining
11 individuals who are not a danger or flight risk. *See Hernandez v. Sessions*, 872 F.3d 994, 990-91
12 (9th Cir. 2017). In other words, “the key government interest at stake here ‘is not the continued
13 detention of Petitioner, but the government’s ability to detain him without a bond hearing.’” *Diep*,
14 2025 WL 604744 at * 5; *see also Zerezghi v. U.S. Citizenship & Immigr. Servs.*, 955 F.3d 802,
15 810 (9th Cir. 2020) (noting that “the question [under the third *Mathews* factor] is not the
16 government’s interest in immigration enforcement” “in general”). Respondents fail to contest and
17 thus concede that a bond hearing imposes minimal cost on the government. *See* Mot. at 6-7.⁶

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19 The balance of the competing interests strongly weighs in favor of Petitioner; therefore,
20 the Court should order a bond hearing. Finally, because the government does not contest the
21 standards that Petitioner explained are required for the bond hearing to comport with due process,
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25 ⁶ In fact, the government incurs great cost detaining noncitizens. *See* Mary Holper, *Discretionary*
26 *Immigration Detention*, 74 Duke L.J. 961, 982 (2025) (“The government squanders the
27 opportunity to benefit from a detainee’s contributions to society, spending roughly \$165 per day
28 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.”).

1 see Mot. at 5-8, the Court should require that the government bear the burden of proving
2 Petitioner's flight risk or danger by a clear and convincing evidence standard, and that the
3 immigration court consider alternatives to detention and Petitioner's ability to pay. Petition ¶¶ 76-
4 78.

6 CONCLUSION

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

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13 Dated: May 7, 2025

By: /s/ Victoria Petty
Victoria Petty

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