

LAWYERS' COMMITTEE FOR CIVIL RIGHTS
OF THE SAN FRANCISCO BAY AREA
JORDAN WELLS (SBN 326491)
jwells@lccrsf.org
VICTORIA PETTY (SBN 338689)
vpetty@lccrsf.org
131 Steuart Street # 400
San Francisco, CA 94105
Telephone: 415 543 9444
Attorneys for Petitioner

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

PRINCE PETERS,

Petitioner,

v.

MINGA WOFFORD, Facility Administrator of
Mesa Verde ICE Detention Center,

Respondent.

Case No. _____

**VERIFIED PETITION FOR WRIT OF
HABEAS CORPUS**

Petitioner Prince Peters (“Petitioner” or “Mr. Peters”) respectfully petitions this Honorable Court for a writ of habeas corpus to remedy his unlawful prolonged detention by Respondents (the “government”), as follows:

INTRODUCTION

1. Over five years ago, ICE arrested and civilly detained Prince Peters, a refugee from Liberia. From behind bars, he has been in immigration proceedings for that entire time, three years of which he spent waiting for the Board of Immigration Appeals to rule on his motion to reopen his removal proceedings. Having prevailed in that appeal, his case is now back at square one, proceeding before a newly assigned immigration judge, where he is pursuing meritorious applications for relief from deportation. ICE has moved Mr. Peters coast to coast to different detention facilities, some of them notorious for poor conditions and abuse, never explaining why. Mr. Peters’ unusually prolonged, ongoing detention violates both substantive and procedural due process under the Fifth Amendment of the U.S. Constitution.

2. First, his detention has become punitive due to the sheer length of confinement and conditions he has endured. ICE has now detained Mr. Peters more than 10 times longer than Mr. Peters spent in criminal custody for the offenses that triggered his deportation proceedings. “[A]t some point ... detention can ‘become excessively prolonged, and therefore punitive,’ resulting in a due process violation.” *See United States v. Torres*, 995 F.3d 695, 708 (9th Cir. 2021) (quoting *United States v. Salerno*, 481 U.S. 739, 747 n.4 (1987)). Mr. Peters’ now more than five years detention surpasses any reasonable inference of what the Ninth Circuit meant by the “point” at which detention becomes unconstitutionally prolonged.

3. Second, Mr. Peters has never been afforded a bond hearing before a neutral adjudicator where ICE bore the burden of proving that his detention is justified. This Court has ordered bond hearings on procedural due process grounds for habeas petitioners detained for far less time than

1 Mr. Peters. *Diep v. Wofford*, No. 1:24-cv-01238-SKO, Dkt. 14 (E.D. Cal. Feb. 25, 2025)
2 (petitioner detained for 13 months); *Sho v. Current or Acting Field Off. Dir.*, No. 1:21-CV-01812
3 TLN AC, 2023 WL 4014649 (E.D. Cal. June 15, 2023) (petitioner detained for 28 months), *report*
4 *and recommendation adopted*, No. 1:21-CV-1812-TLN-AC, 2023 WL 4109421 (E.D. Cal. June
5 21, 2023).

6
7 4. To seek a remedy for the ongoing violations of his Fifth Amendment due process rights,
8 Mr. Peters brings this petition for a writ of habeas corpus and accompanying order to show cause.
9 Because Mr. Peters' ongoing five-year civil detention has become unconstitutionally punitive, Mr.
10 Peters requests that this Court order his immediate release from custody, with appropriate
11 conditions of supervision if necessary. In the alternative, Mr. Peters requests that this court order
12 the procedural safeguard of a bond hearing before an immigration judge at which (1) ICE bears
13 the burden of proving flight risk and dangerousness by clear and convincing evidence and (2) the
14 immigration judge considers alternatives to detention and Mr. Peters' ability to pay a monetary
15 bond.
16

17 5. Without this Court's intervention, Mr. Peters' now five-year civil detention will continue.

18 JURISDICTION

19 6. Petitioner Prince Peters is detained in the custody of Respondents at Mesa Verde ICE
20 Processing Center ("Mesa Verde") in Bakersfield, California. Jurisdiction is proper pursuant to
21 Article 1 § 9, clause 2 of the United States Constitution (the Suspension Clause); the Due Process
22 Clause of the Fifth Amendment to the Constitution; 28 U.S.C. § 2241 (habeas corpus); 28 U.S.C.
23 § 1331 (federal question); and Article III of the Constitution. This Court may grant relief under
24 the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. §
25 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651. The government has waived its sovereign
26 immunity and permitted judicial review of agency action under 5 U.S.C. § 702. Moreover,
27
28

1 sovereign immunity does not bar claims against federal officials seeking solely to prevent future
2 violations of federal law.

3 7. The federal habeas statute empowers this Court to decide the legality of Petitioner's
4 detention and directs courts to "hear and determine the facts" of a habeas petition and to "dispose
5 of the matter as law and justice require." 28 U.S.C. § 2243; *see also I.N.S. v. St. Cyr*, 533 U.S.
6 289, 301 (2001) ("[A]t its historical core, the writ of habeas corpus has served as a means of
7 reviewing the legality of Executive detention, and it is in that context that its protections have been
8 strongest."). The common law gave courts power to release a petitioner to bail even absent a
9 statute contemplating such release. *Wright v. Henkel*, 190 U.S. 40, 63 (1903) ("[T]he Queen's
10 Bench had, 'independently of statute, by the common law, jurisdiction to admit to bail.'"") (quoting
11 *Queen v. Spilsbury*, 2 Q.B. 615 (1898)).
12
13

14 VENUE

15 8. Venue for the instant habeas corpus petition lies in this District because it is the district
16 with territorial jurisdiction over Respondent Minga Wofford, the Facility Administrator and de
17 facto warden of the ICE contract facility at which Petitioner is currently detained. *See Rasul v.*
18 *Bush*, 542 U.S. 466, 478 (2004) (holding that "because 'the writ of habeas corpus does not act
19 upon the prisoner who seeks relief, but upon the person who holds him in what is alleged to be
20 unlawful custody,'" proper federal district is dependent on the location of the custodian); *accord*
21 *Rumsfeld v. Padilla*, 542 U.S. 426, 444-45 (2004) (holding that jurisdiction must be obtained by
22 service within the territorial jurisdiction of the district court); *id.* at 451 (explaining petition "must
23 be filed in the district court whose territorial jurisdiction includes the place where the custodian is
24 located") (Kennedy, J., concurring).
25

26 PARTIES

27 9. Petitioner Prince Peters is a citizen of Liberia that arrived in the United States on or about
28

1 September 22, 2003 as a child refugee. He has been detained since February 19, 2020 in
2 Immigrations and Customs Enforcement (“ICE”) custody without a bond hearing.

3 10. Respondent Minga Wofford is the Facility Administrator (and *de facto* warden) of Mesa
4 Verde. She oversees operations at Mesa Verde, where Petitioner is detained. She is an employee
5 of The GEO Group, Inc. (“GEO”), a private prison company that contracts with ICE to operate
6 Mesa Verde.
7

8 **STATEMENT OF FACTS**

9 11. Mr. Peters was born in Liberia. He narrowly escaped the horrific violence of the First
10 Liberian civil war, but not unscathed. Before he was five years old, Mr. Peters witnessed the
11 murder of his parents at a Lutheran church where Liberian security forces accused the adult
12 churchgoers of being insurgents and summarily executed them.
13

14 12. After his parents' murder, Mr. Peters nearly became one of the many lost street children
15 produced by Liberia's civil wars; however, he was later taken in and cared for by his adoptive
16 mother, during the same period that more than 300,000 lost and orphaned children were being
17 conscripted as child soldiers. Mr. Peters lived in a refugee camp in Ivory Coast for a few years
18 before coming to the United States.

19 13. Along with his adoptive mother and blood-related sister, Mr. Peters arrived in the United
20 States on or about September 22, 2003 as a refugee. The Immigration and Nationality Act (“INA”
21 or the “Act”) defines a refugee as a person who is (1) outside of the country of their nationality
22 and (2) unable to return to their country of nationality due to persecution or a well-founded fear of
23 persecution. 8 U.S.C. § 1101(a)(42). One can only seek referral for refugee status from outside
24 the United States (which differs from asylum, where the applicant must already be present in the
25 United States). Each year, in consultation with Congress, the President determines the numerical
26 ceiling for refugee admissions into the United States. *See* 8 U.S.C. §§ 1157(a), (e). An individual
27
28

1 with refugee status may apply for permanent residence (i.e. a “green card”) one year after
2 admission to the United States. 8 C.F.R. § 1209.1(b). Mr. Peters was unaware of his eligibility
3 for adjustment of status until recently, so he never applied for a green card.

4 14. On February 19, 2020, the Department of Homeland Security (“DHS”) issued a warrant
5 for Mr. Peters’ arrest and a Notice to Appear for removal proceedings in immigration court. ICE
6 took Mr. Peters into custody on or about that same day. Declaration of Bridget Cambria (Cambria
7 Dec.), ¶ 4. Mr. Peters has been detained by ICE ever since.

8 15. DHS charged Mr. Peters with removability under 8 U.S.C. §§ 1227(a)(2)(A)(ii) and (iii),
9 which define as removable any noncitizen “convicted of two or more crimes involving moral
10 turpitude, not arising out of a single scheme of criminal misconduct” or “convicted of an
11 aggravated felony.” Cambria Dec., ¶ 5. Mr. Peters has been convicted of the following offenses:
12 (1) simple assault, (2) forgery, (3) theft, and (4) terroristic threats. *Id.* Beyond time served and
13 probation, the only criminal sentence requiring confinement that Mr. Peters has ever received
14 resulted from his 2019 conviction of simple assault and terroristic threats under Title 18
15 Pennsylvania Consolidated Statutes §§ 2706(a)(1) and 2701(a)(3). Following a guilty plea, Mr.
16 Peters was sentenced 23 months in Pennsylvania’s Washington County Correctional Facility in
17 July 2019. Cambria Dec., ¶ 5. Mr. Peters was released early on parole. *Id.*

18 16. After his early release from criminal custody, Mr. Peters complied with the conditions of
19 his parole and got a job. Then, ICE arrested Mr. Peters on February 19, 2020. Cambria Dec., ¶ 6.
20 ICE effectuated arrest by calling Mr. Peters’ probation officer, who called Mr. Peters in for an
21 unannounced check-in. *Id.* When Mr. Peters arrived less than an hour after his probation officer
22 called, ICE arrested him. *Id.* ICE detained Mr. Peters at Cambria County Prison in Ebensburg,
23 Pennsylvania. *Id.* ICE then filed the Notice to Appear with EOIR, and thus began Mr. Peters
24 immigration proceedings, which have now lasted more than five years. *Id.*

17. Before he obtained immigration counsel in November 2021, Mr. Peters was a *pro se* respondent in immigration court. Cambria Dec., ¶ 7. During his removal proceedings, the Immigration Judge (“IJ”) found him generally credible, but during his last hearing on July 14, 2020, the IJ ordered him removed from the United States and denied his applications for asylum, withholding of removal, and protection under Convention Against Torture, stating that conditions in Liberia had substantially improved since the country's civil wars. *Id.* Mr. Peters timely appealed the IJ’s decision to the BIA on August 10, 2020, again, *pro se.* *Id.* The BIA affirmed the IJ’s decision on December 2, 2020. *Id.*

18. Once Mr. Peters finally obtained *pro bono* immigration counsel in November 2021, his attorney identified a significant flaw in the IJ’s removal order and the underlying proceedings. At all times during his removal proceedings, Mr. Peters, as a refugee, was eligible to seek a generous waiver that would allow him to present a permanent residency application in immigration court. Cambria Dec., ¶ 8. The IJ was legally required to advise Mr. Peters of this form of relief and afford him a chance to make the application but failed to do so. *Id.* at ¶ 9 (citing 8 C.F.R. 1240.11(a)(2)). To address this error, Mr. Peters’ immigration counsel filed an emergency motion to stay removal and a motion to reopen Mr. Peters’ removal proceedings. *Id.* at ¶ 11.

19. The BIA granted an emergency stay of removal on November 29, 2021, after considering, *inter alia*, Petitioner's likelihood of success on the merits of his motion to reopen. Cambria Dec., ¶ 13. On July 22, 2023, Mr. Peters, through counsel, filed a motion to expedite consideration of his motion to reopen with the BIA. *Id.* at 12.

20. Finally, on September 12, 2024, the BIA granted Mr. Peters’ motion to reopen removal proceedings and remanded the case to the IJ to “address all relevant evidence and arguments regarding [Mr. Peters’] application for adjustment of status under INA § 209(a). . . and a waiver under INA § 209(c)[.]” Cambria Dec., ¶ 13, Ex. A. The BIA agreed that “the Immigration Judge

1 did not fully or clearly advise [Mr. Peters] of his eligibility for section 209(a) adjustment and a
 2 section 209(c) waiver.” *Id.* at Ex. A.

3 21. Mr. Peters’ case is now back before the immigration court to address his adjustment of
 4 status to lawful permanent resident and waiver of inadmissibility grounds. Cambria Dec., ¶ 14.
 5 The IJ scheduled a hearing to begin assessing his eligibility for these immigration benefits for May
 6 9, 2025. Even after the IJ reaches a decision, each side has the right to seek at least two rounds of
 7 appeal, first to the BIA, then to the Ninth Circuit. *Id.* Each appeal could last 6-12 months. *Id.*

9 22. Throughout the more than five years that Mr. Peters has been defending himself against
 10 removal, ICE has shuffled Mr. Peters around to at least seven facilities around the country – York
 11 County Prison in York, Pennsylvania; Cambria Co. Prison in Ebensburg, Pennsylvania; Krome
 12 North Service Processing Center in Miami, Florida (“Krome”); Baker County Sheriff’s
 13 Department near Jacksonville, Florida (“Baker County”); at least one facility in Texas and one in
 14 Arizona, the names of which Mr. Peters has since forgotten; Golden State Annex in McFarland,
 15 California; and finally, Mesa Verde, where he is currently detained.

17 23. The facilities where ICE has detained Mr. Peters, including Krome¹, Baker County², and
 18

19 ¹ *E.g.*, UndocuBlack Network, Haitian Bridge Alliance, Nat’l Immigration Project of the Nat’l
 20 Lawyers Guild, Freedom For Immigrants, *COVID-19 Negligence, Sexual Assault, Retaliation,*
 21 *Verbal Abuse, Religious Discrimination, Anti-Blackness, and Deplorable Conditions at Krome*
 22 *North Services Processing Center in Miami, Florida* (Oct. 6, 2021),
[https://static1.squarespace.com/static/5a33042eb078691c386e7bce/t/615defe5e76a986c1af29d7a/1633546214397/Multi-Individual+CRCL+Anti-](https://static1.squarespace.com/static/5a33042eb078691c386e7bce/t/615defe5e76a986c1af29d7a/1633546214397/Multi-Individual+CRCL+Anti-Blackness+and+Other+Abuse+of+Black+immigrants+at+Krome+Oct+2021.pdf)
[Blackness+and+Other+Abuse+of+Black+immigrants+at+Krome+Oct+2021.pdf](https://static1.squarespace.com/static/5a33042eb078691c386e7bce/t/615defe5e76a986c1af29d7a/1633546214397/Multi-Individual+CRCL+Anti-Blackness+and+Other+Abuse+of+Black+immigrants+at+Krome+Oct+2021.pdf);

23 ² *E.g.*, ACLU of Fla., *Multi-Individual Complaint Regarding Inhumane Conditions and Unlawful*
 24 *Treatment at Baker County Detention Center, Including Retaliation, Physical Assault, Medical*
 25 *Neglect, and Unsanitary Conditions* (Sep. 13, 2022),
[https://www.aclufi.org/sites/default/files/crcl_complaint_-_baker_county_detention_center_-_](https://www.aclufi.org/sites/default/files/crcl_complaint_-_baker_county_detention_center_-_final.pdf)
[final.pdf](https://www.aclufi.org/sites/default/files/crcl_complaint_-_baker_county_detention_center_-_final.pdf); Immigrant Action Alliance, Freedom For Immigrants, *Multi-Individual Complaint re:*
 26 *Baker County Detention Center for Inhumane Conditions - Physical Assault, Medical Neglect,*
 27 *Verbal Abuse, Racialized Harassment and Targeting, COVID-19 Negligence, and Retaliation*
 28 (July 21, 2022),

Golden State³, and Mesa Verde⁴ have documented records of inhumane conditions and abuse. While in ICE detention, guards in ICE's detention centers have pepper sprayed Mr. Peters in the eyes, stripped him naked, and sprayed him with ice cold water. He has participated in at least five hunger strikes across the country to protest inadequate food supply and quality, abusive conditions, and other grievances.

24. In addition to enduring carceral conditions in ICE detention, Mr. Peters has *twice* suffered violent and unlawful deportation attempts. Despite the pendency of his immigration proceedings, ICE chained Mr. Peters and forced him to board a plane with many other Liberian men on two separate occasions. He was only deplaned after the ICE agents received orders to do so, due to his immigration attorney's interventions.

25. Mr. Peters currently participates in the "Voluntary Work Program," wherein ICE authorizes its contract facilities to pay detained laborers \$1 per day to staff the kitchens, cleaning crews, barbershop, and other maintenance. Due to the wages and given that phone calls cost at least seven cents per minute, Mr. Peters budgets to only call his family members only once per week.

26. Despite being detained for more than five years, Mr. Peters has never had a bond hearing where an immigration judge considered whether his detention is justified.

[https://static1.squarespace.com/static/5a33042eb078691c386e7bce/t/62d95e2af761ff08f169367f/1658412594632/Public_Copy_Multi-](https://static1.squarespace.com/static/5a33042eb078691c386e7bce/t/62d95e2af761ff08f169367f/1658412594632/Public_Copy_Multi-Individual+CRCL+for+Baker+County+Sheriff%27s+Office+July+21%2C+2022_Redacted.pdf)

[Individual+CRCL+for+Baker+County+Sheriff%27s+Office+July+21%2C+2022_Redacted.pdf](https://static1.squarespace.com/static/5a33042eb078691c386e7bce/t/62d95e2af761ff08f169367f/1658412594632/Public_Copy_Multi-Individual+CRCL+for+Baker+County+Sheriff%27s+Office+July+21%2C+2022_Redacted.pdf); ³ E.g., 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>;

⁴ E.g., ACLU of N. Cal., ACLU of S. Cal., Centro Legal de la Raza, Freedom for Immigrants, Innovation Law Lab, *Retaliation Against Individuals in Immigration Detention at Mesa Verde Detention Facility and Golden State Annex* (Sep. 12, 2022), <https://lofgren.house.gov/sites/evo-subsites/lofgren-evo.house.gov/files/9.12.22%20Mesa%20Verde%20-%20Golden%20State%20CRCL%20Complaint%20FINAL.pdf>

LEGAL FRAMEWORK

27. Civil immigration detention is limited by both substantive and procedural due process.

28. The Immigration and Nationality Act authorizes the civil immigration detention of individuals pending removal proceedings. Section 1226(a), the “general” detention provision, authorizes ICE to detain a noncitizen “pending a decision on whether [he] is to be removed from the United States,” while allowing the government to release the noncitizen on bond of at least \$1,500 or on conditional parole. 8 U.S.C. § 1226(a). Individuals detained under § 1226(a) are entitled to a bond hearing before an IJ at which they can seek release. *See* 8 C.F.R. § 1003.19; 8 C.F.R. § 1236.1.

29. Section 1226(c), on the other hand, categorically requires the detention of noncitizens who are deportable for certain criminal convictions. 8 U.S.C. § 1226(c). Individuals detained under § 1226(c) are not eligible for a bond hearing before an IJ.

30. Nonetheless, detention under these sections must comport with the Due Process Clause. 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*, 533 U.S. at 693. “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; *see also United States v. Salerno*, 481 U.S. 739, 755 (1987) (“In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.”).

31. Due process has a substantive and a procedural component. Substantive due process “forbids the government to infringe certain ‘fundamental’ liberty interests *at all*, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest.” *Reno v. Flores*, 507 U.S. 292, 302 (1993) (emphasis in original). Substantive due process prohibits civil detention that is punitive in purpose or in effect, including detention that is

unreasonably prolonged. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972) (nature and duration of confinement must “bear some reasonable relation” to its purpose); *Salerno*, 481 U.S. at 747 n.4 (detention may become “excessively prolonged, and therefore punitive”). Procedural due process, on the other hand, ensures that there are “adequate procedural protections” to protect an individual’s interests. *Zadvydas*, 533 U.S. at 690.

32. When considering due process challenges, courts should first consider whether the government’s deprivation of liberty violates substantive due process. Only if the detention passes muster in that inquiry does the court consider a procedural due process claim. *See Huynh v. Reno*, 56 F. Supp. 2d 1160, 1162 n.3 (W.D. Wash. 1999) (citing *Salerno*, 481 U.S. at 746) (“[O]nly when a restriction on liberty survives substantive due process scrutiny does the further question of whether the restriction is implemented in a procedurally fair manner become ripe for consideration.”).

I. Immigration Detention Violates Substantive Due Process if it is Punitive, Meaning Excessive or Unnecessary in Relation to its Purpose.

33. Substantive due process prohibits civil detention that is punitive. Civil detention that has a non-punitive purpose may nevertheless be unconstitutionally punitive if it is “‘excessive in relation to [its non-punitive] purpose,’ or is ‘employed to achieve objectives that could be accomplished in so many alternative and less harsh methods[.]’” *Jones v. Blanas*, 393 F.3d 918, 934 (9th Cir. 2004) (internal citations omitted). These principles apply to immigration detention; indeed, in proceedings elsewhere “the government has conceded ‘that mandatory detention under [section] 1226(c) without a bond hearing violates the Due Process Clause when it becomes unreasonably prolonged in relation to its purpose[.]’” *Reid*, 17 F.4th at 8.

34. Prolonged immigration detention may become unconstitutionally punitive in three ways.

35. First, civil detention becomes unconstitutionally punitive when it becomes excessive in

duration. “[F]or detention to remain reasonable,” greater justification is needed “as the period of [] confinement grows.” *Zadvydas*, 533 U.S. at 701; *id.* at 690 (“A statute permitting indefinite detention of [a noncitizen] would raise a serious constitutional problem”); *see also, e.g., Salerno*, 481 U.S. at 747 n.4 (1987) (recognizing there may be a “point at which detention in a particular case might become excessively prolonged, and therefore punitive, in relation to Congress’ regulatory goal”); *Jackson*, 406 U.S. at 733 (expressing “substantial doubt” that statutes authorizing pretrial detention of incompetent criminal defendants “could survive constitutional scrutiny if interpreted to authorize indefinite commitment”); *McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249-50 (1972) (upholding “short-term confinement with a limited purpose;” however, “by the same token, the duration of the confinement must be strictly limited” to adhere to due process).

36. Second, civil immigration detention is not constitutionally permissible unless it is reasonably related to the purpose of preventing danger to the community or flight risk. *Demore v. Kim*, 538 U.S. 510, 515 (2003); *see also Zadvydas*, 533 U.S. at 690. In *Demore*, the Supreme Court rejected a facial due process challenge to mandatory detention under Section 1226(c) and upheld “brief” mandatory detention on the misinformed understanding that it lasts “an average ... of 47 days” in the “vast majority” of removal cases and otherwise rarely exceeds five months. *Demore*, 538 U.S. at 529-30.⁵ Yet *Demore* did not disturb the longstanding principle that civil detention cannot be punitive, and did not consider the constitutionality of prolonged § 1226(c) detention—let alone the extremely prolonged detention at issue in this case. Where an individual does not pose a danger to the

⁵ After the Court in *Demore* issued its decision based on the government’s estimate of detention length, the government admitted that it had submitted false 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*, Case No. 18-cv-04187-TSH, 2019 WL 7491555, at *5 (N.D. Cal. Jan. 7, 2019).

community or a flight risk, continued civil detention does not reasonably serve a legitimate government interest and is, therefore, punitive.

37. Third, civil detention is punitive if its purpose can be achieved through “less harsh” alternatives to physical custody. *Cf. Jones*, 393 F.3d at 934 (recognizing that a restriction is punitive where it is aimed at an objective that could be accomplished in alternative, less harsh ways). Thus, the availability of alternatives to incarceration is relevant to the determination of whether civil detention is unlawfully punitive. The Ninth Circuit has also explained that conditions of civil detention are presumed to be punitive when they are indistinguishable from those of criminal pretrial custody. *Jones*, 393 F.3d at 934.

38. In sum, prolonged civil immigration detention is unconstitutionally punitive when (1) the duration of the detention exceeds the bounds permitted by due process to achieve the limited purposes of civil confinement, (2) a person poses no significant risk of flight or danger to the community, or (3) restrictions short of physical custody are sufficient to mitigate any risk a detained person poses.

II. Even When Not Punitive, Prolonged Immigration Detention Without an Individualized Bond Hearing Violates Procedural Due Process.

39. Even if not punitive, “[i]n the context of immigration detention, it is well-settled that ‘due process requires adequate procedural protections to ensure that the government's asserted justification for physical confinement outweighs the individual's constitutionally protected interest in avoiding physical restraint.’” *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011)); *see also Sajous v. Decker*, No. 18-cv-2447, 2018 WL 2357266, at *8 (S.D.N.Y. May 23, 2018) (“The Court’s first conclusion is essentially conceded by the Government: that prolonged detention under § 1226(c) without providing [a noncitizen] with a bond hearing will—at some point—violate the right to due process.”).

40. To satisfy procedural due process, non-punitive detention must be accompanied by a prompt individualized hearing before a neutral decisionmaker to ensure the detention serves the government's legitimate goals. *See, e.g., Casas-Castrillon v. Dep't of Homeland Sec.*, 535 F.3d 942, 949 (9th Cir. 2008) (“We hold that the government may not detain a legal permanent resident such as Casas for a prolonged period without providing him a neutral forum in which to contest the necessity of his continued detention.”), *abrogated on other grounds as recognized by Avilez v. Garland*, 69 F.4th 525, 533-34 (9th Cir. 2023); *see also Salerno*, 481 U.S. at 750-51.

ARGUMENT

41. Mr. Peters’ civil detention of over **five years – which is 10 times longer than any criminal sentence he has ever served** – in conditions that are indistinguishable from criminal custody is excessive in relation to any government interest in continuing to detain him. Because his prolonged detention has become unconstitutionally punitive, Mr. Peters is entitled to immediate release from civil custody.

42. In the alternative, procedural due process entitles Mr. Peters to an evidentiary hearing before the immigration judge presiding over his case to put the government to its proof regarding the necessity of continuing his prolonged detention.

I. Mr. Peters’ Continued Detention is Punitive in Violation of his Substantive Due Process Rights.

43. First, the sheer length of Mr. Peters civil detention, exceeds the bounds permitted by due process. In the context of detention prior to a criminal conviction, the Supreme Court upheld a statute creating a categorical presumption of pretrial detention for people convicted of certain crimes but made clear that otherwise permissible detention violated the Constitution once it became prolonged. *Salerno*, 481 U.S. 739. Applying *Salerno*, the Ninth Circuit held that twenty-one months of pre-trial detention “is approaching the limits of what due process can tolerate” for

1 a defendant awaiting trial who had multiple prior convictions and a history of failing to appear in
2 court. *Torres*, 995 F.3d at 709-10 (holding that “due process demands that the district court begin
3 Torres’s trial or reconsider bail subject to appropriate conditions very soon.”). Far shorter periods
4 of confinement than Mr. Peters’ have been held unconstitutional. *See, e.g., United States v.*
5 *Theron*, 782 F.2d 1510, 1516-17 (10th Cir. 1986) (holding four months pretrial detention “too
6 long” and ordering release within 30 days if trial did not commence); *United States v. Gonzales*
7 *Claudio*, 806 F.2d 334, 341 (2d Cir. 1986) (“[d]etention that has lasted for fourteen months and,
8 without speculation, is scheduled to last considerably longer, points strongly to a denial of due
9 process”); *United States v. Chen*, 820 F. Supp. 1205, 1210 (N.D. Cal. 1992) (one-year detention
10 unconstitutional). Five years in immigration custody, combined with an uncertain length of
11 continued detention during the pendency of his adjustment of status application and any future
12 appeals, violates substantive due process.
13
14

15 44. Second, because Mr. Peters does not pose a significant danger to the community nor a risk
16 of flight, continuing his civil immigration detention is not constitutionally permissible. *See*
17 *Demore*, 538 U.S. at 515; *Zadvydas*, 533 U.S. at 690. The Pennsylvania Parole Board determined
18 that Mr. Peters was fit for early release from his 23-month sentence imposed for his criminal
19 offense. *See* Cambria Dec., ¶ 5. According to Section 6135 of the Pennsylvania Parole Code, the
20 Parole Board considers many factors when deciding whether to release a person in criminal
21 custody on parole, including, but not limited to: (1) the nature and circumstances of the offense,
22 (2) the general character and background of the offender, and (3) the conduct of the person while
23 in criminal custody. Under these factors and others, Mr. Peters was released from custody early.
24 Once he was released out in the community, Mr. Peters appeared when required to meetings with
25 his probation officer. Indeed, ICE effectuated the arrest of Mr. Peters by asking his probation
26 officer to call him in for an unscheduled visit, and Mr. Peters complied. Cambria Dec., ¶ 6. Given
27
28

1 this record, Mr. Peters does not pose a risk of danger or flight that justify his continued
2 confinement.

3 45. Third, even if the Court were to determine that Mr. Peters poses some risk of flight or
4 danger, ample “less harsh” alternatives to continued physical custody are available to mitigate
5 those risks. *Jones*, 393 F.3d at 934. For example, the success of ICE’s Intensive Supervision
6 Appearance Program (“ISAP”) demonstrates that release on conditions can effectively mitigate
7 any possible risk. ISAP has received compliance rates close to perfect. *See Hernandez*, 872 F.3d
8 at 991 (ISAP “resulted in a 99% attendance rate at all EOIR hearings and a 95% attendance rate at
9 final hearings”). Alternatives to detention, moreover, are far less costly for the government than
10 continued incarceration. *See id.* at 996-97. Alternatives to detention could accomplish the
11 government’s legitimate interests in protecting the public and ensuring Mr. Peters’ appearance for
12 immigration matters.
13
14

15 **II. This Court Has Authority to Order Mr. Peters’ Release to Remedy the**
16 **Substantive Due Process Violation.**

17 46. If the Court finds that Mr. Peters’ continued detention is punitive and a substantive due
18 process violation, the proper remedy is release. That remedy is well within the Court’s habeas
19 power as well as the Court’s equitable powers to remedy a constitutional violation under § 1331.

20 47. The federal habeas statute directs district courts to “dispose of the matter as law and justice
21 require.” 28 U.S.C. § 2243; *see also Hilton v. Braunskill*, 481 U.S. 770, 775 (1987) (explaining
22 that habeas courts have long had “the largest power to control and direct the form of judgment to
23 be entered”) (quoting *In re Bonner*, 151 U. S. 242, 261 (1894)).

24 48. In immigration habeas cases, courts have ordered release upon determining that detention
25 violates substantive due process. *See, e.g., Doe v. Becerra*, No. 23-cv-04767, Dkt. 56 (N.D. Cal.
26 May 15, 2024); *Lawson v. Gerlinski*, 332 F. Supp. 2d. 735, 744-46 (M.D. Pa. 2004) (concluding
27
28

1 that petitioner's prolonged immigration detention violated substantive due process and ordering
2 release); *see also Tuan Thai v. Ashcroft*, 366 F.3d 790, 792 (9th Cir. 2004) (affirming habeas grant
3 requiring release pursuant to *Zadvydas*); *Ekeh v. Gonzales*, 197 F. App'x 637, 638 (9th Cir. 2006)
4 (ordering release pursuant to *Zadvydas*).

5
6 49. During the COVID-19 pandemic, courts in this Circuit ordered release when conditions of
7 confinement were excessive in relation to the person's risk of flight or danger to the community.
8 *See, e.g., Bent v. Barr*, 445 F. Supp. 3d 408, 414-415, 421 (N.D. Cal. 2020); *Doe v. Barr*, No. 20-
9 cv-02141-LB, 2020 WL 1820667, at *8-11 (N.D. Cal. Apr. 12, 2020).

10 50. Under such circumstances, district courts may impose conditions of release to manage the
11 governmental interests at stake. *See, e.g., Becerra*, No. 23-cv-04767 at Dkt. 56; *Ortuño v.*
12 *Jennings*, No. 20-cv-02064-MMC, 2020 WL 1701724, at *5 (N.D. Cal. Apr. 8, 2020) (setting
13 conditions of release); *Zepeda Rivas v. Jennings*, No. 20-CV-02731-VC, 465 F. Supp. 3d 1028,
14 1036 (N.D. Cal. 2020) (citing inherent habeas authority to release on bail); *id.*, Dkt. 543 (N.D. Cal.
15 Aug. 13, 2020) (setting multiple conditions of release); *id.*, Dkt. 471 (N.D. Cal. July 31, 2020)
16 (conditioning release on attendance at group sobriety meetings).

17
18 51. Whether it is under the habeas statute, or its broad powers to craft adequate equitable relief,
19 this Court has authority to order release and craft appropriate conditions as necessary. Here,
20 because Mr. Peters' prolonged detention is excessive and unnecessary in relation to any
21 governmental interests, the Court should order ICE to release him.

22
23 **III. In the Alternative, Mr. Peters' Five Year Detention Without a Bond Hearing**
24 **Violates Procedural Due Process.**

25 52. Because Mr. Peters is subject to punitive civil incarceration in violation of substantive due
26 process, this Court should order his release without needing to reach the question of whether his
27 detention also violates procedural due process. Should the Court reach this issue, however, it
28

1 should find that Mr. Peters’ prolonged detention violates procedural due process absent any
2 individualized inquiry into whether the government’s justification for confinement “outweighs the
3 ‘individual’s constitutionally protected interest in avoiding physical restraint.’” *Zadvydas*, 533
4 U.S. at 690 (citations omitted).

5 53. To assess due process challenges to immigration detention without a bond hearing, courts
6 have embraced the rubric outlined in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). *See, e.g.*,
7 *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (assuming without deciding that
8 *Mathews* applied to a request for a second bond hearing); *Padilla*, 704 F. Supp. 3d at 1173-74;
9 *Doe*, 2025 WL 691664, at *5-6; *Sho*, 2023 WL 4014649, at *3-5. The three *Mathews* factors
10 include (1) the private liberty interest threatened by governmental action; (2) the risk of erroneous
11 deprivation of such interest and the probable value of additional procedural safeguards; and (3) the
12 government interest. *Mathews*, 424 U.S. at 335.

13 54. For the first prong of the *Mathews* test, Mr. Peters’ has an undeniable liberty interest
14 because he has been detained for more than five years. 424 U.S. at 335. Regardless of the length
15 of detention, all people have “a substantial liberty interest in being free from confinement and an
16 interest in preventing arbitrary detention.” *Padilla v. U.S. Immigr. & Customs Enf’t*, 704 F. Supp.
17 3d 1163, 1174 (W.D. Wash. 2023); *Black v. Decker*, 103 F.4th 133, 151 (2d Cir. 2024) (describing
18 “the interest in being free from imprisonment” as “the most significant liberty interest there is”).
19 That interest is amplified for Mr. Peters. ICE has already imprisoned Mr. Peters for more than
20 five years at the time of this Petition’s filing. *See Diouf v. Napolitano*, 634 F.3d 1081, 1091-92
21 (9th Cir. 2011) (“When detention crosses the six-month threshold and release or removal is not
22 imminent, the private interests at stake are profound.”), *abrogated on other grounds as recognized*
23 *by Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1201 (9th Cir. 2022). Mr. Peters’ time in civil
24 detention is now more than *forty times* the length of the “brief” detention contemplated by the
25
26
27
28

1 Court in *Demore*. See *Demore*, 538 U.S. at 530 (citing an average detention length of one and a
2 half months for cases that do not involve an appeal). And his confinement is likely to continue.
3 Cambria Dec. ¶ 14-15. The first *Mathews* factor thus weighs in favor of Mr. Peters.

4 55. On the second prong, Mr. Peters has never had a bond hearing, and thus, he will suffer the
5 erroneous risk of deprivation of his liberty without an individualized hearing. The risk of
6 erroneous deprivation of his liberty is high for Mr. Peters, as he has been detained since 2020
7 without any neutral evaluation of whether the government can justify detention under his personal
8 circumstances. “[T]he risk of an erroneous deprivation of liberty in the absence of a hearing before
9 a neutral decisionmaker is substantial.” *Diouf*, 634 F.3d at 1092. Conversely, “the probable value
10 of additional procedural safeguards—an individualized evaluation of the justification for his
11 detention—is high, because Respondents have provided virtually no procedural safeguards at all.”
12 *Jimenez v. Wolf*, No. 19-cv-07996-NC, 2020 WL 510347, *3 (N.D. Cal. Jan. 30, 2020) (granting
13 habeas petition for person who had been detained for one year without a bond hearing). Therefore,
14 the second *Mathews* factor militates in favor of this Court ordering a bond hearing.

15 56. The final *Mathews* factor, the government’s interest, also supports Mr. Peters. While the
16 government has interests in ensuring a noncitizen’s appearance in court and protecting the
17 community, providing a bond hearing would “do nothing to undercut those interests.” *Black*, 104
18 F.4th at 153. At any ordered bond hearing, “the IJ would assess on an individualized basis whether
19 the noncitizen presents a flight risk or danger to the community, as IJs routinely do for other
20 noncitizen detainees.” *Id.* at 153–54. Nor can the minimal cost of providing a bond hearing
21 override the public interest in avoiding needless civil detention. As the Second Circuit reasoned
22 in *Black*, “having to do something instead of nothing imposes an administrative and fiscal burden
23 of some kind. But the Department of Justice reported an average cost of detaining noncitizens, in
24 2019, of \$88.19 per prisoner per day ... So, retaining and housing detainees imposes substantial
25
26
27
28

1 costs as well. And, as far as we can tell, ICE may readily access the records of other law
2 enforcement agencies for information bearing on its case for detention where necessary.” *Id.* at
3 154. The government’s interests would be served by providing Mr. Peters an individualized bond
4 hearing before a neutral decisionmaker.

5
6 57. Should this Court find that due process entitles Mr. Peters to an individualized bond
7 hearing, ICE should bear the burden of proving his flight risk and danger by a clear and convincing
8 evidence standard. *See Singh v. Holder*, 638 F.3d 1196, 1204 (9th Cir. 2011) (“[D]ue process
9 places a heightened burden of proof on the State in civil proceedings in which the individual
10 interests at stake ... are both particularly important and more substantial than mere loss of money.”)
11 (internal quotation marks omitted), *abrogated on other grounds by Rodriguez Diaz*, 53 F.4th at
12 1202; *see also Ixchop Perez v. McAleenan*, 435 F. Supp. 3d 1055, 1062 (N.D. Cal. 2020) (noting the
13 “consensus view” among District Courts concluding that “where ... the government seeks to detain an
14 alien pending removal proceedings, it bears the burden of proving that such detention is justified);
15 *Gonzalez*, 2019 WL 330906, at *6 (collecting cases applying *Singh* burden of proof for prolonged
16 detention hearings post-*Jennings*); *Singh v. Barr*, 400 F. Supp. 3d 1005 (S.D. Cal. 2019) (finding due
17 process requires the government to bear the burden in immigration bond proceedings).

18
19 58. During the bond hearing, the IJ should also be required to consider Mr. Peters’ ability to
20 pay a monetary bond. Because Mr. Peters has been detained for more than five years, he has
21 almost no financial resources. “Detention of an indigent for inability to post money bail is
22 impermissible if the individual’s appearance at trial could reasonably be assured by one of the
23 alternate forms of release.” *Hernandez*, 872 F.3d at 990 (internal quotation marks omitted). It
24 follows that—in determining the appropriate conditions of release for immigration detainees—due
25 process requires “consideration of financial circumstances and alternative conditions of release”
26 to prevent against detention based on poverty. *Id.* at 990, 1000 (affirming preliminary injunction
27
28

1 that required immigration officials to consider financial ability to pay a bond and alternative
2 conditions of release). Therefore, any monetary bond should be set at an amount that takes Mr.
3 Peters inability to pay into account.

4 **CLAIM FOR RELIEF**

5 **FIRST CLAIM FOR RELIEF**

6 **Violation of the Fifth Amendment: Substantive Due Process**

7
8 59. Mr. Peters re-alleges and incorporates by reference the paragraphs above.

9 60. The Due Process Clause of the Fifth Amendment forbids the government from depriving
10 any “person” of liberty “without due process of law.” U.S. Const. amend. V.

11 61. The government has two legitimate interests that may be served by civil immigration
12 detention: preventing flight from removal proceedings and protecting the community.

13 62. Prolonged civil immigration detention is punitive in violation of substantive due process
14 when (1) the duration of the detention exceeds the bounds permitted by due process to achieve the
15 limited purposes of civil confinement, (2) a person poses no significant risk of flight or danger to
16 the community, or (3) restrictions short of physical custody are sufficient to mitigate any risk a
17 detained person poses.

18
19 63. Mr. Peters has been detained for more than five years with no end in sight; he is not, nor
20 has any neutral decisionmaker determined him to be, a flight risk or danger. His ongoing five-
21 year long detention is excessive in relation to any legitimate government interest, which would be
22 amply satisfied by any conditions this court deems suitable to his release.

23 64. Mr. Peters’ prolonged detention violates substantive due process.

24
25 **SECOND CLAIM FOR RELIEF**

26 **Violation of the Fifth Amendment: Procedural Due Process**

65. Mr. Peters re-alleges and incorporates by reference the paragraphs above.

66. 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.

67. Mr. Peters’ detention has become unconstitutionally prolonged at five years and counting. Mr. Peters has never had a bond hearing, and will not, because he is detained pursuant to 8 U.S.C. § 1226(c).

68. The Due Process Clause requires additional safeguards in the form of an evidentiary hearing assessing the propriety of Mr. Peters’ continued detention because (1) his unreviewed detention has far exceeded six months, which courts have recognized as a constitutionally significant period of time; (2) the *Mathews* factors weigh heavily in his favor; and (3) the individual circumstances of his detention demonstrate that his continued, unreviewed confinement has become unreasonably prolonged.

69. The Due Process Clause requires the government to establish, at an individualized hearing before a neutral decisionmaker, that Mr. Peters’ prolonged detention is justified by clear and convincing evidence of flight risk or danger, even after consideration of whether alternatives to detention could sufficiently mitigate that risk.

70. Mr. Peters’ ongoing prolonged detention without an individualized evidentiary hearing violates procedural due process.

PRAYER FOR RELIEF

Wherefore, Mr. Peters respectfully requests that this Court:

- 1) Assume jurisdiction over this matter;
- 2) Declare that Mr. Peters’ ongoing prolonged detention violates his right to Substantive Due Process under the Fifth Amendment; or, in the alternative, violates his right to Procedural Due Process under the Fifth Amendment;

3) Issue a Writ of Habeas Corpus and order Respondents to immediately release Mr. Peters from ICE custody;

4) In the alternative, issue a Writ of Habeas Corpus and, promptly thereafter, order a hearing held before an Immigration Judge within 14 days, where Respondents must establish the necessity of further detention by clear and convincing evidence, and where the adjudicator evaluates Mr. Peters' ability to pay in setting bond, and considers alternative conditions of release that reasonably assure the safety of the community and Mr. Peters' future appearances.;

5) Award Mr. Peters reasonable attorneys' fees, costs, and other disbursements in this action permitted 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

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

Dated: April 29, 2025

By: /s/ Victoria Petty
Victoria Petty

LAWYERS' COMMITTEE FOR CIVIL RIGHTS
OF THE SAN FRANCISCO BAY AREA
JORDAN WELLS (SBN 326491)
jwells@lccrsf.org
VICTORIA PETTY (SBN 338689)
vpetty@lccrsf.org
131 Steuart Street # 400
San Francisco, CA 94105
Telephone: 415 543 9444
Attorneys for Petitioner

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

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

Dated: April 25, 2025

By: /s/ Victoria Petty
Victoria Petty
Attorney for Petitioner