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UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF CALIFORNIA

JOHN DOE,

Petitioner,

vs.

TONYA ANDREWS, in official capacity, Facility Administrator of Golden State Annex; ORESTES CRUZ, in official capacity, Field Office Director of ICE's San Francisco Field Office; TODD M. LYONS, in official capacity, Acting Direct of ICE; KRISTI NOEM, in official capacity, Secretary of the U.S. Department of Homeland Security; PAM BONDI, in official capacity, Attorney General of the United States,

Respondents.

Case No.: _____

PETITION FOR WRIT OF HABEAS CORPUS

Immigration Habeas Case

INTRODUCTION

1. Petitioner John Doe ("Mr. Doe" or "Petitioner")[1] is a former lawful permanent resident of the United States with three U.S. citizen children, two of whom are now adults. In early 2022, Mr. Doe was released from federal prison following a federal drug trafficking conviction and spent two years living in the community. He returned to the city where his son lived, held employment installing appliances, attended church and played soccer with his coworkers. During this time, Mr. Doe complied with all his parole requirements and had no negative contact with law enforcement. However, unexpectedly, in April 2024, immigration authorities arrested Mr. Doe at his home in Northern California and transferred him to a detention center over 200 miles away.

2. The Department of Homeland Security ("DHS") initiated removal proceedings against Mr. Doe, alleging he was removable based on his federal conviction. Mr. Doe secured *pro bono* counsel and sought protection from removal [redacted] Mr. Doe's fear claim was presented over the course of four hearings and consisted of hours of testimony – from Mr. Doe and two experts – all of which was subject to cross-examination by DHS. On February 11, 2025, the immigration judge held in a 20-page, single spaced written decision that Mr. Doe [redacted]

[1] Mr. Doe concurrently files a motion to proceed under pseudonym based on his fear that public dissemination of his name and confidential information related to his immigration case will place him and his family members at risk of grave harm. Further, forthcoming is a notice of a request to seal seeking that records that identify his name and the circumstances of his case for fear-based protection be filed under seal for the same reasons.

3. Yet despite prevailing on his claim, Mr. Doe remains detained at Golden State Annex, a detention center located in McFarland, California run by GEO Group Inc., a private, for-profit company, while the Board of Immigration Appeals considers DHS's appeal of the immigration judge's reasoned decision in Mr. Doe's case.

4. Despite the IJ's order in his favor, Mr. Doe remains ineligible for bond pursuant to the Immigration & Nationality Act's ("INA") mandatory detention scheme. *See* 8 U.S.C. § 1226(c). As such, no neutral decisionmaker—whether a federal judge or an immigration judge—has yet conducted any hearing to determine whether Mr. Doe's lengthy incarceration of over one year is warranted based on danger or flight risk.

5. Mr. Doe's prolonged detention without a hearing on danger or flight risk violates the Due Process Clause of the Fifth Amendment. Pursuant to 28 U.S.C. § 2243, Petitioner respectfully requests an order to show cause be issued within three days.

6. Mr. Doe requests that this court issue a writ of habeas corpus and order his release within 21 days unless Respondents schedule a hearing before an immigration judge where (1) in order to continue detention, the government must establish by clear and convincing evidence that Mr. Doe presents a danger or flight risk even after consideration of Mr. Doe's two years of release in the community prior to his current civil detention, his grant of CAT protection, and of alternatives to detention that could mitigate any risk that Petitioner's release would present; and (2) if the government fails to meet this burden, the immigration judge orders Mr. Doe released on appropriate conditions of supervision, taking into account his ability to pay bond.

CUSTODY

7. Mr. Doe is currently detained by ICE at Golden State Annex, in McFarland, California. He has been detained in civil immigration custody since April 16, 2024. During his over 12

months in custody, Mr. Does has never been provided a hearing in which the necessity of his continued detention is determined.

JURISDICTION

8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241, Art. I § 9, cl. 2 of the United States Constitution, 28 U.S.C. § 1331, 28 U.S.C. § 1361; and 5 U.S.C. § 702. This action arises under the Due Process clause of the Fifth Amendment of the United States Constitution, and under the Immigration and Nationality Act of 1952 ("INA"). The Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241, *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

9. Congress has preserved judicial review of challenges to prolonged immigration detention. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 839-41 (2018) (holding that 8 U.S.C. §§ 1226(e), 1252(b)(9) do not bar review of challenges to prolonged immigration detention).

REQUIREMENTS OF 28 U.S.C. § 2243

10. The Court must grant the petition for writ of habeas corpus or issue an order to show cause ("OSC") to Respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return "within *three days* unless for good cause additional time, *not exceeding twenty days*, is allowed. *Id.* (emphasis added).

11. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

12. Habeas corpus must remain a swift remedy. Importantly, "the statute itself directs courts to give petitions for habeas corpus 'special, preferential consideration to insure expeditious hearing and determination.'" *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (internal citations omitted). The Ninth Circuit warned against any action creating the perception "that courts are more concerned with efficient trial management than with the vindication of constitutional rights." *Id.*

VENUE

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

PARTIES

14. Petitioner, JOHN DOE, is a former lawful permanent resident with three U.S. citizen children, two of whom are adults. He obtained his conditional permanent residency in 1998, and those conditions were removed in 2000. An immigration judge determined that Mr. Doe was entitled to deferral of removal [redacted] under CAT on February 11, 2025. The DHS appealed that decision, and the appeal remains pending. Mr. Doe has been detained by ICE in

civil immigration custody since April 16, 2024. He has yet to receive an individualized custody determination before a neutral arbiter despite being detained for over 12 months in immigration custody.

15. Respondent TONYA ANDREWS is the facility administrator of Golden State Annex, a detention center located in McFarland, California run by GEO Group Inc., a private, for-profit company. In her official capacity, she is the *de facto* warden of the facility and is the immediate physical custodian of Mr. Doe. Pursuant to the Ninth Circuit's recent decision in *Doe v. Garland*, 109 F.4th 1188, 1197 (9th Cir. 2024), Tonya Andrews is the proper respondent because she is the *de facto* warden of the facility at which Mr. Doe is detained. A petition for *en banc* rehearing is pending in that case, however, so the other respondents are named herein to ensure effective relief and continued jurisdiction in this case.

16. Respondent ORESTES CRUZ is the Field Office Director of ICE for San Francisco. In his official capacity, he is the federal official most directly responsible for overseeing Golden State Annex. Accordingly, he has legal custody over Mr. Doe.

17. Respondent TODD M. LYONS ("Acting Director Lyons") is the current Acting Director of ICE. As the head of ICE, an agency within the DHS that detains and removes certain noncitizens, Acting Director Lyons is a legal custodian of Mr. Doe, and is named in his official capacity.

18. Respondent, KRISTI NOEM ("Secretary Noem"), is the Secretary of the Department of Homeland Security. She has authority over the detention and departure of noncitizens, like Petitioner, because she administers and enforces immigration laws pursuant to section 402 of the Homeland Security Act of 2002. 107 Pub L. 296 (November 25, 2003). Given this authority,

Secretary Noem is the legal custodian over Mr. Doe and is empowered to carry out any administrative order issued against him.

19. Respondent, PAMELA BONDI ("Attorney General Bondi"), is the Attorney General of the United States, and as such, she is responsible for overseeing the implementation and enforcement of the federal immigration laws. She has the authority to interpret immigration laws and adjudicate removal cases. The Attorney General delegates this responsibility to the EOIR, which administers the immigration courts and the Board of Immigration Appeals ("BIA"). In her official capacity, Attorney General Bondi is the ultimate legal custodian of Mr. Doe.

EXHAUSTION

20. Mr. Doe is not required to exhaust administrative remedies. Exhaustion for habeas claims is prudential, not jurisdictional. *See Laing v. Ashcroft*, 370 F.3d 994, 997 (9th Cir. 2004). The prudential exhaustion requirement may be waived if "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, [or] irreparable injury will result." *Id.* at 1000.

21. Pursuing administrative remedies would be futile, inadequate, and inefficacious for Mr. Doe. As an initial matter, 8 U.S.C. § 1226(c) prohibits the immigration courts from conducting individualized custody hearings for people detained under its terms, which means that Mr. Doe has no administrative remedy to exhaust. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 847 (2018). Even if Mr. Doe had some administrative avenue to pursue, exhausting his constitutional claims would be futile because immigration judges do not have the authority to rule on constitutional questions. *See Wang v. Reno*, 81 F.3d 808, 814-16 (9th Cir. 1996) ("[T]he inability of the INS to adjudicate the constitutional claim completely undermines most, if not all, of the purposes underlying exhaustion"); *Matter of R-A-V-P-*, 27 I&N Dec. 803, 804 n.2 (BIA 2020) ("We do

not have the authority to entertain constitutional challenges to the statutes and regulations we administer."); *Doe v. Barr*, No. 20-CV-02141-LB, 2020 WL 1820667, at *8 (N.D. Cal. Apr. 12, 2020) (holding waiver of exhaustion appropriate as "the petitioner's claim of entitlement to a bond hearing is based on the Fifth Amendment (as opposed to being grounded in a statutory entitlement), and thus exceeds the jurisdiction of the immigration courts and the BIA.").

22. Even if such an avenue were available, requiring exhaustion before the immigration court would also cause Mr. Doe irreparable harm in the form of additional detention and continued separation for his children and community. *See Cortez v. Sessions*, 318 F. Supp. 3d 1134, 1139 (N.D. Cal. 2018) (habeas petitioner "'suffers potentially irreparable harm every day that he remains in custody without a hearing, which could ultimately result in his release from detention'"); *De Paz Sales v. Barr*, No. 19-CV-04148-KAW, 2019 WL 4751894, at *4 (N.D. Cal. Sept. 30, 2019) (waiving exhaustion upon finding that detained noncitizen will suffer irreparable harm upon noting that "[c]ourts in this district, however, have found that waiver is appropriate when detention has become prolonged").

STATEMENT OF FACTS

23. Mr. Doe was born [redacted]. *See* Declaration of John Doe (hereinafter "Doe Decl.") at ¶ 2. He came to the United States in 1990s and became a lawful conditional permanent resident in 1998. *Id.* Those conditions were removed in 2000. *Id.* He has four children, three of whom are U.S. children and two of whom are adults. *Id.* In the years after getting his green card, he worked at his mother's-in-law restaurant and as a forklift operator. *Id.*

24. [redacted]

[redacted]

25. [redacted]

[redacted] Mr. Doe was charged in federal court with possession of a controlled substance with intent to distribute under 8 U.S.C. 8 U.S.C. §§ 841(a)(1) and 841(b)(1)(A). *Id.*; *see also* Exhibit B, Notice to Appear. He took a plea and spent ten years in federal prison. *Id.* In prison, he principally worked in the kitchen. Doe Decl. at ¶ 5.

26. Mr. Doe completed his prison sentence at the beginning of 2022. *Id.* at ¶ 6. He returned to Northern California, where one of his sons lives. *Id.* Mr. Doe held employment installing appliances, attended church on Sundays, and complied with his parole requirements. *Id.* He enjoyed playing soccer and eating out with his son. *Id.* Mr. Doe had no adverse contact with law enforcement. *See* Declaration of Lydia Sinkus (hereinafter "Sinkus Decl.") at ¶ 21.

27. [redacted]

28. Two years later, on April 16, 2024, immigration authorities arrested Mr. Doe at his home in Northern California and transferred him to Golden State Annex, a detention facility more than 200 miles from his home. *See* Doe Decl. at ¶ 7; Exhibit C, Immigration Forms.

Mr. Doe's Removal Proceeding

29. On April 16, 2024, DHS filed a Notice to Appear against Mr. Doe, alleging that his conviction under 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A) rendered him removable under INA § 237(a)(2)(A)(iii) for having been convicted of an aggravated felony and INA § 237(a)(2)(B)(i) for having been convicted of a controlled substance offense. *See* Exhibit B, Notice to Appear. The NTA further alleged that Mr. Doe is a citizen [redacted], that he became a lawful permanent resident on August 24, 2000, and that he was sentenced to 145 months imprisonment. *Id.* With the filing of the NTA, DHS commenced removal proceedings against Mr. Doe before the Adelanto Immigration Court. *Id.*

30. Mr. Doe made his initial appearance in immigration court on April 29, 2024. *See* Sinkus Decl. at ¶ 5. He appeared *pro se* via video from detention. *Id.* The immigration judge explained the proceedings and offered him time to consult with or hire an attorney, which Mr. Doe accepted. *Id.* His case was reset for another master calendar hearing, scheduled for June 5, 2024.[2] *Id.*

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[2] "Master calendar hearings are held for pleadings, scheduling, and other similar matters." Immigration Court Practice Manual, § 4.15(a) at https://www.justice.gov/eoir/reference-materials/ic/chapter-4/15. On the other hand, are "[e]videntiary hearings on contested matters are referred to as individual calendar hearings or merits hearings. Contested matters include challenges to removability and applications for relief." Immigration Court Practice Manual, § 4.16(a).

31. Mr. Doe appeared with the assistance of recently retained *pro bono* counsel at his second master calendar hearing. Sinkus Decl. at ¶ 7. The immigration judge granted counsel's request for additional time to obtain relevant documents, review matters, and consult with Mr. Doe prior to entering pleadings to the NTA. *Id.* At his third master calendar hearing, Mr. Doe entered pleadings to the NTA. Sinkus Decl. at ¶ 8. The immigration judge found that Mr. Doe was removable based on his criminal conviction and ordered him removed [redacted]. *Id.* Mr. Doe, through counsel, indicated that he would be seeking deferral of removal under the CAT. *Id.* The immigration judge ordered Mr. Doe submit his application for relief on August 27, 2024, and scheduled another master calendar hearing for the following day. *Id.* At that hearing in August, the immigration judge outlined the evidence she would require in support of Mr. Doe's application and set his case for an individual calendar hearing on October 24, 2024. Sinkus Decl. at ¶ 9.

32. On October 16, 2024, Mr. Doe's counsel received a phone call from the court clerk asking if she would be willing to have the hearing reset from October 24, 2024, to November 26, 2025, as their hearing slot had been double booked. Sinkus Decl. at ¶ 10. The clerk further information Mr. Doe's counsel that an alternative judge would be covering the hearing and that there were no earlier hearing dates available. *Id.* Mr. Doe's counsel agreed to the court's rescheduling of the hearing. *Id.*

33. It took four hearings to complete testimony in support of Mr. Doe's application for deferral of removal pursuant to CAT. *See* Sinkus Decl. at ¶¶ 11-15. These hearings took place over Webex, on November 26, 2024; December 10, 2024; January 8, 2025; and January 29, 2025. *Id.* Mr. Doe testified, as did Mr. Doe's country conditions expert [redacted]. *Id.*

34. On February 11, 2025, the immigration judge issued a 20-page single-spaced decision, holding that Mr. Doe was entitled to deferral of removal from [redacted] pursuant to the CAT. *See* Exhibit D, Decision of the Immigration Judge.

35. [redacted]

36. [redacted]

[redacted]

37. DHS appealed the decision to the Board of Immigration Appeals ("BIA") on the eve of the 30-day appeal deadline, March 12, 2025. *See* Exhibit E, Appeal Receipt Notice. On April 9, 2025, the BIA issued a briefing schedule, with appeal briefs for both parties due on April 30, 2025. *See* Exhibit F, Briefing Notice. In light of the over 300-page transcript of proceedings, the more than 1100 page record, and her pre-planned leave, Mr. Doe's counsel sought a 21-day extension of time to file the appeal brief. *See* Sinkus Decl. at ¶ 18. On April 17, 2025, the BIA granted the request for additional time, such that the parties' appeal briefs are now due by May 21, 2025. *See* Exhibit G, Order Granting Extension.

38. Despite winning his case, Mr. Doe remains detained, as he is statutorily ineligible for a bond hearing in immigration court pursuant based on his criminal conviction. *See* 8 U.S.C. § 1226(c).

Detention at Golden State Annex

39. . Mr. Doe has been detained for over 12 months at Golden State Annex, an immigration detention center owned and operated by GEO Group, Inc. ("GEO"), a private prison company that has facilities on three continents.[3] For years, immigrants detained at Golden State Annex have raised the alarm about unlivable and unsanitary housing conditions, as well as concerns regarding their treatment. [4]

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[3] The GEO Group, Inc., https://www.geogroup.com/facilities/golden-state-annex/ (last visited April 29, 2025).

[4] California Collaborative for Immigrant Justice, *Starving for Justice: The Denial of Proper Nutrition in Immigration Detention*, April 2022 *available at*

40. For example, on July 13, 2022, a group of individuals detained at Mesa Verde and Golden State Annex filed a complaint for declaratory and injunctive relief and damages against GEO, based on claims related to wage theft and forced labor.[5] *See Hernandez Gomez v. GEO Group, Inc.*, No. 1:22-cv-00868-ADA-CDB, ECF 1 (E.D. Cal. July 12, 2022). The lawsuit further alleges, *inter alia*, that GEO fails to "maintain minimum standards of cleanliness and sanitation," leaving those detained to live in "intolerably filthy conditions, with mold growing in the showers, a stench emanating from the restrooms, and pest [*sic*] running rampant." *Id.* at 2. Detained workers also filed a complaint with the DHS Office for Civil Rights and Civil Liberties ("CRCL") in response to retaliation against individuals detained engaged in individual and collective action to protest the "mistreatment, poor living conditions, and unjust labor conditions they have faced" while at Mesa Verde and Golden State Annex.[6]

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https://www.ccijustice.org/_files/ugd/733055_c43b1cbbdda341b894045940622a6dc3.pdf at 7 (indicating that over half of survey respondents at Golden State Annex reported "receiving insects, hair and/or other foreign object in their meals. Those who found insects in their food specified cockroaches, flies and spiders."); *see also* Maricela Sanchez, "Resistance, Retaliation, Repression: Two Years in California Immigration Detention," ACLU Northern California and Mobile Pathways (Aug. 2024) at 32, at https://www.aclunc.org/sites/default/files/Resistance%20Retaliation%20Repression%20-%20Two%20Years%20in%20California%20Immigration%20Detention.pdf (reviewing data from grievances submitted by noncitizens detained at detention centers located in California, including Golden State Annex) ("The data from the grievances and the stories we have heard from people in detention reveal unsanitary conditions, inadequate medical attention, staff misconduct, harassment, and the excessive use of solitary confinement.").

[5] Jhabvala Romero, Farida, *ICE Detainees Making $1 a Day Sue Over Alleged Wage Theft*, July 16, 2022, available at https://www.kqed.org/news/11919749/ice-detainees-making-1-a-day-sue-over-alleged-wage-theft ("GEO pays the paltry daily rate of $1 to detainees who volunteer to clean dormitories and dining halls, do laundry, assist detainees with disabilities and do other tasks to maintain the facilities.").

[6] CRCL Complaint: Retaliation Against Individuals in Immigration Detention at Mesa Verde Detention Facility and Golden State Annex, Sept. 12, 2022, available at https://www.ccijustice.org/laf-09-12-2022-mv-gsa at 3 ("[I]ndividuals detained at Mesa Verde

41. More recently, in March 2024, advocates sent a letter to the San Francisco ICE Field Office expressing grave concerns about the unjust conditions at Golden State Annex, exacerbated by ICE's decision to rapidly increase the number of people sent to the detention center. *See* "Advocacy Letter: Urgent request to stop new intakes at Golden State Annex," CCIJ (March 11, 2024) at https://www.ccijustice.org/advocacy-gsa-population-increase (highlighting a rise in reports regarding failures to meet basis needs, such as provide water, timely and adequate medical care, required hygiene items or shoes and clean clothing, and disruptions to means and programming).

42. The difficult conditions at Golden State Annex are further evidenced by two complaints filed with DHS's CRCL Office in August 2024. *See* "Press Release: Civil Rights Complain Filed After Golden State Annex Officers Violently Attacked Detained People," CCIJ (Aug. 15, 2024) at https://www.ccijustice.org/post/civil-rights-complaint-gsa-a4-raid (complaint filed on behalf of a group of immigrants detained at Golden State Annex who were attacked by guards during a raid on April 15, 2024, describing that during the raid, guards "physically assaulted the people in their custody, destroyed their personal property, used pepper spray indiscriminately, verbally abused them and committed additional violations"); *see* CRCL Complaint at https://cdn.craft.cloud/5cd1c590-65ba-4ad2-a52c-b55e67f8f04b/assets/media/Programs/Immigrant-Rights/CRCL-Complaint-Redacted-IR-

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have faced retaliation for asserting their right to decline participation in the "voluntary" work program, as well as for filing formal complaints documenting unjust conditions... Since [labor strikes by Dorm C and A began' ICE and GEO have moved individuals to solitary confinement, restricted access to programming, and attempted to transfer at least one strike participant to an out-of-state facility").

250101.pdf (complaint filed on behalf of six noncitizens alleging that "staff at Golden State Annex have subjected them to sexual abuse, gender-based harassment, retaliation, and violations of transgender care standards").

43. Mr. Doe describes detention at Golden State Annex as "worse" than his incarceration in federal prison. *See* Doe Decl. at ¶ 9. He reports restricted and limited freedom of movement, lack of programming, and inedible food, as well as delayed and lacking medical care. *Id.* For example, he has yet to receive glasses despite being detained by immigration for over a year. Doe Decl. at ¶ 10. He reports not receiving necessary medical care, for both chronic pain [redacted] and recent injuries. Doe Decl. at ¶ 11. He fears that he will not receive a necessary surgery for skin growths covering both of his eyes, which are painful and impeding his ability to see. Doe Decl. at ¶ 10. Mr. Doe's fears are well founded, as the DHS Office of the Inspector General "noted delays in detainee's receipt of optometry care" at the facility and recognized that "[d]elayed access to optometry care could lead to negative health effects." DHS Office of the Inspector General, "Results of Unannounced Inspection of ICE's Golden State Annex in McFarland, California," (April; 18, 2024) 3, at https://www.oig.dhs.gov/sites/default/files/assets/2024-04/OIG-24-23-Apr24.pdf.

44. Mr. Doe has now been incarcerated by ICE without a bond hearing for 378 days and is very likely to remain detained, absent federal court intervention. Mr. Doe's immigration counsel estimates that the BIA is likely to a four to six months on DHS's appeal of the immigration judge's decision granting Mr. Doe deferral of removal under the CAT. *See* Sinkus Decl. at ¶ 19. In the event the BIA affirms the DHS's appeal, it may remand the case to the Immigration Court, in which case, proceedings may last for many more months. *Id.* Alternatively, the BIA may reverse the immigration judge's decision and order Mr. Doe's removal [redacted]. *Id.* If that

were to occur, Mr. Doe is likely to pursue a petition for review before the Ninth Circuit Court of Appeals. *Id.* According to the Ninth Circuit's website, for a civil appeal (which includes immigration matters) oral argument would be expected within "approximately 6 – 12 months from the notice of appeal date, or approximately 4 months from completion of briefing," and while there is no time limit for how long it might take from the time of argument to the time of decision, "most cases are decided within 3 months to a year after submission."[7]

45. Even though Mr. Doe has been detained for over 12 months, he has never been provided a bond hearing before a neutral decisionmaker to determine whether he presents a danger to the community or flight risk such as to justify his continued detention.

LEGAL FRAMEWORK

Due Process Requires, at Minimum, a Bond Hearing When Detention Has Become Prolonged

46. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see also id.* at 718 (Kennedy, J., dissenting) ("Liberty under the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention."). This fundamental due process protection extends to "every person within the nation's borders," regardless of immigration status. *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772, 781 (9th Cir. 2014).

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[7] *See* Ninth Circuit Court of Appeals, "Frequently Asked Questions," *available at* https://www.ca9.uscourts.gov/general/faq/#:~:text=For%20a%20civil%20appeal%2C%20approximately,months%20after%20briefing%20is%20complete (updated December 2023).

47. 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." *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted). In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention: (1) to mitigate the risks of danger to the community; and (2) to prevent flight. *Id.*; *Demore v. Kim*, 538 U.S. 510, 528 (2003).

48. In 2018, the Supreme Court held that the Ninth Circuit erred by interpreting Sections 1226(c) and 1225(b) to require bond hearings as a matter of statutory construction. *Jennings*, 138 S. Ct. 830 at 844. Because the Ninth Circuit has not decided whether the Constitution itself requires bond hearings in cases of prolonged detention, the Court remanded for the Ninth Circuit to address the issue. *Id.* at 851-52. The majority opinion did not express any views on the constitutional question and left it to the lower courts to address the issue in the first instance. In turn, the Ninth Circuit remanded the constitutional question to the district court but expressed "grave doubts that any statute that allows for arbitrary prolonged detention without any process is constitutional or that those who founded our democracy precisely to protect against the government's arbitrary deprivation of liberty would have thought so." *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018).[8]

49. Due process requires that the government provide bond hearings to noncitizens whose detention has become prolonged. "The Due Process Clause foresees eligibility for bail as part of

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[8] The Ninth Circuit declined to decide whether due process required a bond hearing for noncitizens detained under § 1226(c) and remanded to district court for consideration of due process claim. *See Avilez v. Garland*, 48 F.4th 915, 927 (9th Cir. 2022).

due process" because "[b]ail is basic to our system of law." *Jennings*, 138 S. Ct. at 862 (Breyer, J., dissenting) (internal quotation marks and citations omitted). While the Supreme Court upheld the mandatory detention of a noncitizen under Section 1226(c) in *Demore*, it did so based on the petitioner's concession of deportability and the Court's understanding that detentions under Section 1226(c) are typically "brief." *Demore*, 538 U.S. at 523 n.6, 528. Where a noncitizen has been detained for a prolonged period or is pursuing a substantial defense to removal or claim to relief, due process requires an individualized determination that such a significant deprivation of liberty is warranted. *Id.* at 532 (Kennedy, J., concurring) ("individualized determination as to his risk of flight and dangerousness" may be warranted "if the continued detention became unreasonable or unjustified"); *see also Jackson v. Indiana*, 406 U.S. 715, 726, 736 (1972) (detention beyond the "initial commitment" requires additional safeguards); *McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249-50 (1972) ("lesser safeguards may be appropriate" for "short-term confinement"); *Hutto v. Finney*, 437 U.S. 678, 685-86 (1978) (in the Eighth Amendment context, "the length of confinement cannot be ignored in deciding whether [a] confinement meets constitutional standards").

50. Consistent with this view, the federal courts have made clear that prolonged detention without a bond hearing violates due process. *See Hilario M.R. v. Warden*, No.1:24-cv-998-EPG-HC, 2025 WL 1158841, at *1, *10-11 (E.D. Cal. April 24, 2025) (holding due process requires an additional bond hearing after more than 20 months in custody without a bond hearing for over 14 months and granting habeas); *Kiet Diep v. Wofford*, No. 1:24-cv-01238-SKO, 2025 WL 604744, *4-5 (E.D. Cal. Feb. 25, 2025) (holding mandatory detention of 13 months without a bond hearing violates due process and orders bond hearing with burden of proof on the government); *Salesh P. v. Kaiser*, No. 22-CV-03018-DMR, 2022 WL 17082375, at *9 (N.D.

Cal. Nov. 18, 2022) (holding mandatory detention of 14 months to be unconstitutionally prolonged, ordering bond hearing with burden of proof on the government); *Lopez v. Garland*, 631 F.Supp.3d 870, 879, 882-83 (E.D. Cal. 2022) (granting habeas petition for noncitizen subject to mandatory detention for approximately one year and ordering bond hearing with burden of proof on the government); *Romero Romero v. Wolf*, No. 20-CV-08031-TSH-, 2021 WL 254435, at *5 (N.D. Cal. Jan. 26, 2021) (holding mandatory detention of just over a year to be unconstitutionally prolonged and granting habeas); *Landeros Jimenez v. Wolf*, No. 19-CV-07996-NC, 2020 WL 510347 (N.D. Cal. Jan. 30, 2020) (same); *Rajnish Rajnish v. Jennings*, No. 3:20-CV-07819-WHO-, 2020 WL 7626414, at *8-10 (N.D. Cal. Dec. 22, 2020) (concluding that nine month detention since initial bond hearing unconstitutional and granting habeas); *Masood v. Barr*, 19-CV-07623-JD, 2020 WL 95633, at *5 (N.D. Cal. Jan. 8, 2020) (concluding that nine month detention without bond hearing unconstitutionally prolonged and granting habeas); *Martinez v. Clark*, No. C18-1669-RAJ-MAT, 2019 WL 5968089, at *10-11 (W.D. Wash. May 23, 2019) (finding detention just over a year that would certainly last 15-17 months total unreasonable and granting habeas);. *Gonzalez v. Bonnar*, No. 18-cv-532-JCS, 2019 WL 330906, at *5, *7 (N.D. Cal. Jan. 25, 2019) (finding mandatory detention of more than one year and guaranteed to last at least another two to three months unreasonable and granting habeas).

Detention Has Become Unreasonably Prolonged Under the* Mathews *Balancing Test

51. Since *Jennings*, numerous courts have evaluated as-applied constitutional challenges to prolonged immigration detention using the *Mathews v. Eldridge*, 424 U.S. 319 (1976) balancing test, which balances (1) the private interest threatened by government action; (2) the risk of erroneous deprivation of such interest and the probable value of additional procedural safeguards; and (3) the government interest. *See Kiet Diep*, 2025 WL 604744, at *4 ("Most

district courts in the Ninth Circuit have employed the *Mathews* test in the context of evaluating whether due process entitles a petitioner to a bond hearing.") (citing cases).[9] The Ninth Circuit has also "noted the common use of the *Mathews* test and assumed (without deciding) that it applies to due process claims in the immigration detention context." *See id.* citing *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206-07 (9th Cir. 2022).

52. Here, where Mr. Doe has *never* received any individualized assessment of the need for his continued detention, the *Mathews* factors clearly weigh in his favor.

53. For the first prong of the *Mathews* test, the Court must consider the private interest threatened by governmental action. 424 U.S. at 355. Mr. Doe indisputably has a weighty interest in his liberty, the core private interest at stake here. *Zadvydas*, 533 U.S. at 690. He has endured over 12 months of civil detention. "The private interest here—freedom from prolonged detention—is unquestionably substantial." *Singh v. Holder*, 638 F.3d 1196, 1208 (9th Cir. 2011). In similar circumstances, this District has held that a noncitizen's "private interest in being free from prolonged detention of approximately 13 months weighs in his favor." *Kiet Diep*, 2025 WL 604744 at *4.

54. Moreover, Mr. Doe's extensive U.S. ties heighten his private interest to be free and

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[9] Many district courts in the Ninth Circuit have applied the *Mathews* test in the immigration detention context. *See e.g.*, *Hilario M.R.*, 2025 WL 1158841, at *7; *Martinez Leiva v. Becerra*, No. 23-CV-02027-CRB, 2023 WL 3688097, at *7 (N.D. Cal. May 26, 2023); *Diaz v. Becerra*, No. 22-CV-09126-DMR, 2023 WL 3237421, at *6 (N.D. Cal. May 2, 2023); *Salesh P.*, 2022 WL 17082375 at *8; *Henriquez v. Garland*, No. 22-CV-00869-EJD, 2022 WL 2132919 at *5 (N.D. Cal. June 14, 2022); *Ameen*, 2022 WL 1157900, at *6; *Landeros Jimenez v. Wolf*, No. 19-CV-07996-NC, 2020 WL 510347, at *3 (N.D. Cal. Jan. 30, 2020); *Marroquin Ambriz v. Barr*, 420 F.Supp.3d 953, 963-65 (N.D. Cal. Oct. 28, 2019); *De Paz Sales v. Barr*, No. 19-CV-04148-KAW, 2019 WL 4751894, at *5 (N.D. Cal. Sept. 30, 2019); *Lopez Reyes v. Bonnar*, No. 18-CV-07429-SK, 2018 WL 7474861, at *9 (N.D. Cal. Dec. 24, 2018).

reunited with his family and loved ones. *See Landon v. Plasencia*, 459 U.S. 21, 34 (1982) (in applying the first *Mathews* factor, the right "rejoin [one's] immediate family" "ranks high among the interests of" a detained individual with longstanding ties to the U.S.); *see* Doe Decl. at ¶ 6 (discussing his ties to the community, including his U.S. citizen children). His private interest in liberty is therefore profound and weighs in his favor. *See Diouf v. Napolitano*, 634 F.3d 1081, 1091-92 (9th Cir. 2011) (*Diouf II*) ("When detention crosses the six-month threshold and release or removal is not imminent, the private interests at stake are profound."); *Zadvydas*, 533 U.S. at 701 ("Congress previously doubted the constitutionality of detention for more than six months.").

55. Courts have also considered factors such as (1) whether detention is likely to continue, (2) reasons for the delay, and (3) whether the conditions of confinement are meaningfully different from criminal punishment. As noted above, Mr. Doe has been detained for a substantial length of time, *supra*, and his detention is likely to continue for months due to the government's appeal of the immigration judge's grant of CAT deferral. *See* is Exhibit E, Appeal Receipt Notice for Appeal, Sinkus Decl. at ¶¶ 4-19 (describing immigration case history and length of future detention). *See Lopez v. Garland*, 631 F. Supp. 3d 870, 880 (E.D. Cal. 2022) ("In general, as detention continues past a year, courts become extremely wary of permitting continued custody absent a bond hearing."). Mr. Doe is looking at months of additional detention while the appeal is pending, and in the event the Board of Immigration Appeals vacates the immigration judge's decision or remands the case back to the Immigration Court for further proceedings. *Id.* *German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 211, 212 (3d Cir. 2020) (explaining that administrative and judicial appeals of an immigration case may "add months more in prison" such that "the likelihood that his detention will continue strongly supports a

finding of unreasonableness."). Furthermore, Mr. Doe's confinement and experiences at a facility operated by a private, for-profit prison contractor demonstrate that his conditions of confinement are not meaningfully different from those of criminal punishment. *See supra* ¶¶ 36-40; Doe Decl. at ¶ 9.

56. The second prong of the *Mathews* test, the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards, also weighs heavily in Mr. Doe's favor. 424 U.S. at 335. "[T]he risk of an erroneous deprivation of liberty in the absence of a hearing before a neutral decisionmaker is substantial." *Diouf II*, 634 F.3d at 1092. Conversely, "the probable value of additional procedural safeguards—an individualized evaluation of the justification for his detention—is high, because Respondents have provided virtually no procedural safeguards at all." *Landeros Jimenez*, 2020 WL 510347, at *4 (granting habeas petition for person who had been detained for one year without a bond hearing). Courts have routinely found that the second *Mathews* factor favors noncitizens, where the noncitizen, like Mr. Doe, has received no process whatsoever. *See, e.g.*., *Kiet Diep*, 2025 WL 604744 at *5 ("Given that Petitioner has been held without a bond hearing for over a year and it is not clear when detention will end, the risk of erroneous deprivation weighs in favor of granting a bond hearing.").

57. In this case, Mr. Doe has been deprived of liberty in civil detention for over a year with no process whatsoever. The value of providing Mr. Doe with basic procedural safeguards through a bond hearing is high, as the record here shows not only that Mr. Doe was granted deferral of removal, but that he has already demonstrated two-years of successful release in the community, *since* his release on the sole conviction upon which his removal order is based; and wherein during that period of release he complied with orders of federal probation, was

employed, and was an active father. *See* Exhibit D, Declaration of the Immigration Judge; Doe Decl. at ¶ 6; *see also Pham v. Becerra*, No. 23-CV-01288-CRB, 2023 WL 2744397, at *6 (N.D. Cal. Mar. 31, 2023) (looking to the noncitizen's steady employment and family ties to the community in discussing the value of providing a bond hearing). Indeed, in a similar prolonged detention habeas, Respondents "concede[d] that a bond hearing 'might provide additional procedural safeguards.'" *Henriquez*, 2022 WL 2132919 at *5, *6.

58. The third *Mathews* prong also supports Mr. Doe's petition: the government interest is weak here because the interest at stake "is the ability to detain Petitioner *without providing him a bond hearing*, not whether the government may continue to detain him at all." *Lopez-Reyes*, 362 F. Supp. 3d at 777. *See also Martinez Leiva*, 2023 WL 3688097, at *8 ("Requiring the government to provide Martinez Leiva with a bond hearing does not meaningfully undermine the government's interest in detaining non-citizens who pose a danger to the community or are a flight risk."). As this Court explained in *Kiet Diep*, 2025 WL 604744 at *5, "[p]roviding a bond hearing would not undercut the government's asserted interest in effecting removal. Indeed, the purpose of a bond hearing is to inquire whether the [noncitizen] represents a flight risk or danger to the community."

59. Moreover, as the government has conceded in similar cases, the cost of providing such a bond hearing is minimal. *See Singh v. Barr*, F.Supp.3d 1005, 1021 (S.D. Cal. Sept. 3, 2019) ("The government has not offered any indication that a second bond hearing would have outside effects on its coffers."); *see also De Paz Sales*, 2019 WL 4751894, at *7 ("[T]he Government does not argue there are any costs to providing a bond hearing."). "Given the minimal costs of conducting a bond hearing, and the ability of the IJ to adjudicate the ultimate legal issues as to whether Petitioner's continued detention is justified, courts have concluded that the government

interest is not as weighty as Petitioner's." *Kiet Diep*, 2025 WL 604744 at *5.[10]

60. Applying these standards, courts in this District and Circuit have repeatedly held that continued arbitrary detention violates due process for individuals who were held under the same detention statute, and for similar lengths of time, as Mr. Doe. *See Kiet Diep*, 2025 WL 604744 at *5; *Romero Romero*, 2021 WL 254435, at *2, *5 (N.D. Cal. Jan. 26, 2021) (holding that the petitioner's detention under § 1226(c) of just over one year without a custody hearing was "not compatible with due process" and granting habeas); *Landeros Jimenez*, 2020 WL 510347, at *1, *2-*4 (holding that the petitioner's detention under § 1226(c) of just over one year without a custody hearing violated his due process rights and granting habeas); *Gonzalez*, 2019 WL 330906, at *1-2, *7 (same). This Court should so hold as well.

Due Process Requires Certain Minimal Safeguards at a Prolonged Detention Bond Hearing

61. Mr. Doe requests a prolonged detention bond hearing before a neutral adjudicator in which the government bears the burden of proving his flight risk or danger by a clear and convincing evidence standard. *See Singh v. Holder*, 638 F.3d 1196, 1204 (9th Cir. 2011). ("[D]ue process places a heightened burden of proof on the State in civil proceedings in which the individual interests at stake…are both particularly important and more substantial than mere loss of money."). District courts have applied *Singh* and held that in cases of prolonged detention, the government bears the burden of proof. *See Hilario M.*, 2025 WL 1158841, at *10-11 (holding

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[10] Further, and in any event, it is "always in the public interest to prevent the violation of a party's constitutional rights." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (internal quotation marks omitted); *cf. Diaz v. Kelly*, 878 F.3d 710, 718 (9th Cir. 2017) (the government "suffers no harm from an injunction that merely ends unconstitutional practices and/or ensures that constitutional standards are implemented.").

the government must justifying petitioner's continued detention by clear and convincing evidence); *Kiet Diep*, 2025 WL 604744, at *5 (ordering the government provide the petitioner with a bond hearing at which the government "must justify Petitioner's continued detention by clear and convincing evidence"); *Lopez*, 631 F.Supp.3d at 883 n.9 (same) see *also e.g.*, *Hernandez Gomez*, 2023 WL 2802230, at *4 (placing the burden of proof on the government in prolonged detention bond hearing); *Diaz*, 2023 WL 3237421, at *8 (same); *Salesh P.*, 2022 WL 17082375, at *9 (same).

62. Indeed, where the Supreme Court has permitted civil detention in other contexts, it has relied on the fact that the government bore the burden of proof by at least clear and convincing evidence. *See United States v. Salerno*, 481 U.S. 739, 750, 752 (1987) (upholding pre-trial detention after a "full-blown adversary hearing" requiring "clear and convincing evidence" and "a neutral decisionmaker"); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (striking down civil detention scheme that placed burden on the detained individual); *Zadvydas*, 533 U.S. at 692 (finding post-final order custody review procedures deficient because, *inter alia*, they placed the burden on the detained individual).

63. Due process likewise requires consideration of a noncitizen's ability to pay a bond and alternatives to detention. "Detention of an indigent [individual] 'for inability to post money bail,' is impermissible if the individual's 'appearance at trial could reasonably be assured by one of the alternate forms of release.'" *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Pugh v. Rainwater*, 572 F.2d 1053, 1058 (5th Cir. 1978) (*en banc*)). It follows that—in determining the appropriate conditions of release for immigration detainees—due process requires "consideration of financial circumstances and alternatives to conditions of release" to prevent against detention based on poverty. *Id.*

64. In addition, due process requires meaningful consideration of the successful two-year-period Mr. Doe spent in the community, after his release from criminal custody and prior to his detention by immigration authorities. In the event the Court orders a bond hearing where the government bears the burden of proof, meeting that burden would require the government to explain why Mr. Doe presents a *current* danger to the community despite his two years out of custody following the sole predicate offense underlying his removal proceedings. *See c.f. Perera v. Jennings*, 598 F. Supp. 3d 736, 746 (N.D. Cal. 2022) (holding that "ICE's multi-year delay in pursuing custody of Perera following his release from criminal custody suggests that the Government has a low interest in detaining Perera"); *Nielsen v. Preap*, 586 U.S. 392, 438 (2019) (emphasizing the constitutional concern implicated by denying a non-citizen a bond hearing "who committed a crime many years before and has since reformed, living productively in a community") (Breyer, J., dissenting)).

CLAIM FOR RELIEF

Mr. Doe's Prolonged Detention Without a Bond Hearing Violates Due Process

(U.S. Const. Amend V)

65. Mr. Doe 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. To justify Mr. Doe's ongoing prolonged detention, due process requires that the government establish, at an individualized hearing before a neutral decisionmaker, that Mr. Doe's detention is justified by clear and convincing evidence of flight risk or danger, taking into account Mr. Doe's two-year period of release *after* his release on the sole conviction underlying his removal proceedings and whether alternatives to detention could sufficiently mitigate that

risk.

68. Mr. Doe has never been provided with a bond hearing before a neutral decisionmaker to determine whether his prolonged detention is justified based on danger or flight risk even though he has been incarcerated by ICE for over a year. For these reasons, Mr. Doe's ongoing prolonged detention without a hearing violates due process.

PRAYER FOR RELIEF

Wherefore, Petitioner, Mr. Doe, respectfully requests that this Court grant the following relief:

1) Assume jurisdiction over the matter;
2) Enjoin Respondents from transferring Mr. Doe to another detention facility while habeas proceedings are pending;
3) Issue a Writ of Habeas Corpus and order Mr. Doe's release within 21 days, unless the government schedules a hearing to take place before an immigration judge where: (1) to continue detention, the government must establish by clear and convincing evidence that Mr. Doe presents a current risk of flight or danger, even after consideration of Mr. Doe's two years of release in the community prior to his current civil detention and alternatives to detention that could mitigate any risk that Petitioner's release would present; and (2) if (a) the government cannot meet its burden, the immigration judge orders Mr. Doe's release on appropriate conditions of supervision, taking into account Petitioner's ability to pay bond or (b) the government meets its burden, the immigration judge issues a reasoned decision explaining how it determined the government met its burden of proof and why no condition or combination of conditions short of detention could reasonably assure Petitioner's appearance at court;
4) Issue a declaration that Mr. Doe's prolonged detention without the possibility of a bond

violates the Due Process Clause of the Fifth Amendment;

5) Award reasonable costs and attorneys' fees under the Equal Access to Justice Act, and any other applicable statute or regulation; and

6) Grant any other further relief this Court may deem appropriate.

Dated: April 29, 2025

Respectfully submitted,

s/Kelsey Morales
Kelsey Morales
Counsel for Petitioner
Alameda County Public Defender