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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

**LOBA L. M. aka D.A.L.M.\*\* ,**

*Petitioner,*

v.

TONYA ANDREWS, Facility Administrator  
of Golden State Annex ICE ; POLLY  
KAISER, Acting Field Office Director of the  
San Francisco Field Office of  
U.S. Immigration and Customs Enforcement;  
TODD M. LYONS, Acting Director of  
U.S. Immigration and Customs Enforcement;  
KRISTI NOEM, Secretary of the U.S.  
Department of Homeland Security; and  
PAMELA BONDI, Attorney General of the  
United States,

*Respondents.*

**VERIFIED PETITION FOR  
WRIT OF HABEAS CORPUS**

**IMMIGRATION HABEAS CASE**

\* *Pro hac vice* admission forthcoming.

\*\* Mot. for Leave to File Under Initials forthcoming.

## **INTRODUCTION**

1  
2       1.       Petitioner Loba L.M. (“Petitioner” or “Loba”) is a transgender woman and  
3 longtime lawful permanent resident detained by U.S. Immigration and Customs Enforcement  
4 (“ICE”) at the Golden State Annex ICE detention facility (“GSA”) for over 16 months, with no  
5 end in sight. She files this petition based on her prolonged civil detention without a bond hearing,  
6 in violation of her due process rights.

7       2.       Loba came to the United States from El Salvador in 2008 at the age of twelve  
8 after surviving repeated sexual abuse, as well as rejection by her family because of her sexuality  
9 and gender presentation. Although Loba was convicted of a serious offense committed six years  
10 ago, she has committed herself to rehabilitation and was released early from prison because of  
11 good conduct. Because of her transgender identity and sexuality, she fears torture and death if  
12 returned to El Salvador. Loba’s application for protection from removal under the Convention  
13 Against Torture (“CAT”), was pending for nearly 12 months before an immigration judge (“IJ”)   
14 denied the application in early May 2025. Loba promptly appealed the decision to the Board of  
15 Immigration Appeals (“BIA”) and is waiting for a briefing schedule. She does not have a final  
16 order of removal.

17       3.       ICE has detained Loba for over 491 days under 8 U.S.C. § 1226(c), which  
18 categorically imposes indefinite civil detention without a bond hearing, on the basis of a prior  
19 criminal conviction for which she already completed her sentence. Since her detention by ICE  
20 began in January 2024, no neutral adjudicator has reviewed whether Loba’s ongoing prolonged  
21 imprisonment is justified. Absent this Court’s intervention, Loba’s detention has no end in sight.  
22 Whether she wins or loses her claim for protection from removal, she faces months if not years  
23 more of detention without a bond hearing.

24       4.       Loba’s prolonged detention without a neutral hearing on flight risk or danger  
25 violates her right to procedural due process. She asks the Court to issue a writ of habeas corpus  
26 and order her release within 14 days, unless the Government schedules a bond hearing before an  
27 IJ at which the Government must justify her continued detention by clear and convincing  
28 evidence.

## JURISDICTION

5. Loba is detained in the custody of Respondents at GSA in McFarland, California.

6. Jurisdiction is proper over a writ of habeas corpus pursuant to Art. 1 § 9, cl. 2 of the United States Constitution (the Suspension Clause); 28 U.S.C. § 2241 (habeas corpus); and 28 U.S.C. § 1331 (federal question). This action arises under the Due Process Clause of the Fifth Amendment of the U.S. Constitution, and the Immigration & Nationality Act (“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.

7. The federal habeas statute establishes the Court’s power to decide the legality of Loba’s detention and directs courts to “hear and determine the facts” of a habeas petition and to “dispose of the matter as law and justice require.” 28 U.S.C. § 2243. Moreover, the Supreme Court has held that the federal habeas statute codifies the common law writ of habeas corpus as it existed in 1789. *INS v. St. Cyr*, 533 U.S. 289, 301 (2001) (“[A]t its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest.”). The common law gave courts power to release a petitioner to bail even absent a statute contemplating such release. *Wright v. Henkel*, 190 U.S. 40, 63 (1903) (“[T]he Queen’s Bench had, ‘independently of statute, by the common law, jurisdiction to admit to bail[.]’”) (quoting *Queen v. Spilsbury*, 2 Q.B. 615 (1898)).

8. Congress has preserved judicial review of challenges to prolonged immigration detention. *See Jennings v. Rodriguez*, 583 U.S. 281, 292–96 (2018) (holding that 8 U.S.C. §§ 1226(e), 1252(b)(9) do not bar review of legal challenges to prolonged immigration detention); *see also id.* at 876 (Breyer, J., dissenting) (“8 U.S.C. § 1252(b)(9) . . . by its terms applies only with respect to review of an order of removal[.]”) (internal quotation marks and brackets omitted)).

## VENUE

9. Venue is proper in this District because it is the district with territorial jurisdiction over Respondent Tonya Andrews, the Facility Administrator and *de facto* warden of the facility at which Loba is detained, which is in this District. *See Doe v. Garland*, 109 F.4th 1188 (9th Cir.

2024); *Rasul v. Bush*, 542 U.S. 466, 478 (2004) (holding that the proper federal district is dependent on location of the custodian); *accord Rumsfeld v. Padilla*, 542 U.S. 426, 451 (2004) (Kennedy, J., concurring) (explaining the petition “must be filed in the district court whose territorial jurisdiction includes the place where the custodian is located.”).

### **EXHAUSTION**

10. Loba is not required to exhaust administrative remedies. Exhaustion for habeas claims is prudential, not jurisdictional. *See Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001); *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). 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.”” *Hernandez*, 872 F.3d at 988 (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)).

11. Here, administrative remedies would be futile, inadequate, and not efficacious for Loba. By its terms, section 1226(c) prohibits immigration courts from conducting individualized custody hearings, which means that Loba has no administrative remedy to exhaust. *See Jennings*, 583 U.S. at 305–06 (holding that § 1226(c) mandates detention without a bond hearing until the conclusion of removal proceedings). Even if Loba had some administrative avenue to pursue, exhausting her constitutional claims would be futile because the immigration courts and BIA lack the authority to rule on constitutional questions. *See Wang v. Reno*, 81 F.3d 808, 815–16 (9th Cir. 1996) (per curiam) (“[T]he inability of the INS to adjudicate the constitutional claim completely undermines most, if not all, of the purposes underlying exhaustion[.]”).

12. Requiring exhaustion at the immigration court and BIA would also cause Loba irreparable harm in the form of additional detention and continued separation from her family and community. *See Cortez v. Sessions*, 318 F. Supp. 3d 1134, 1139 (N.D. Cal. 2018) (determining that 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”) (citations and internal quotation marks omitted). Exhaustion here is not required.

**REQUIREMENTS OF 28 U.S.C. § 2243**

13. The federal habeas statute requires the Court to “forthwith” grant the petition for writ of habeas corpus or issue an order to show cause (“OSC”) to the Respondents, unless Loba is not entitled to relief. 28 U.S.C. § 2243. If the Court issues an OSC, it 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).

14. 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).

15. Habeas corpus must remain a swift remedy. Accordingly, “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) (citing and quoting *Van Buskirk v. Wilkinson*, 216 F.2d 735, 737–38 (9th Cir. 1954)). The court in *Yong* cautioned that the great writ would be “reduced to a sham” in the absence of speedy adjudication by district courts and warned against any action creating the perception “that courts are more concerned with efficient trial management than with the vindication of constitutional rights.” *Yong*, 208 F.3d at 1120 (internal citations and quotation marks omitted).

16. Loba thus asks the Court to immediately issue an OSC with the Government’s return due no later than twenty days after its issuance.

**PARTIES**

17. Petitioner Loba L.M. is a transgender woman who is currently detained by Respondents pending removal proceedings. She has been detained for more than 491 days without any individualized inquiry into ICE’s justification for her detention.

18. Respondent Tonya Andrews, is the Facility Administrator (and de facto warden) of GSA in McFarland, California, and is named in her official capacity. She oversees operations at GSA, where Loba is detained. The Ninth Circuit has determined that the facility

1 administrator is the “immediate” and legal custodian of noncitizens held by ICE at privately-run  
2 facilities in the Eastern District. *See Doe*, 109 F.4th at 1198–99. Respondent Andrews is a legal  
3 custodian of Loba. She is named in her official capacity.

4 19. Respondent Polly Kaiser is the Field Office Director for the San Francisco Field  
5 Office of ICE Enforcement and Removal Operations (“ERO”). Respondent Kaiser is the federal  
6 official most directly responsible for overseeing GSA. She is a legal custodian of Loba. She is  
7 named in her official capacity.

8 20. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and  
9 Customs Enforcement. Respondent Lyons is responsible for ICE’s policies, practices, and  
10 procedures, including those relating to the detention of noncitizens. Respondent Lyons is a legal  
11 custodian of Loba. He is named in his official capacity.

12 21. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland  
13 Security (“DHS”), an agency of the United States. She is responsible for overseeing DHS and its  
14 sub-agency, ICE, and has ultimate responsibility over the detention of noncitizens in civil  
15 immigration custody. *See* 8 U.S.C. § 1103(a). Respondent Noem is a legal custodian of Loba.  
16 She is named in her official capacity.

17 22. Respondent Pamela Bondi is the Attorney General of the United States and the  
18 head of the Department of Justice (“DOJ”), which encompasses the BIA and IJs as part of its  
19 sub-agency, the Executive Office for Immigration Review (“EOIR”). As Attorney General,  
20 Respondent Bondi has the authority to interpret the immigration laws and adjudicate removal  
21 cases and bond hearings. *See* 8 U.S.C. § 1103(g). The Attorney General delegates this  
22 responsibility to the EOIR, which administers the immigration courts and the BIA. Respondent  
23 Bondi is a legal custodian of Loba. She is sued in her official capacity.

## 24 **STATEMENT OF FACTS**

### 25 **Lengthy U.S. Residence & Childhood Trauma**

26 23. Loba has lived in the United States as a lawful permanent resident since the age of  
27 12 and has deep family and community ties here. She was born in El Salvador in 1996. Exh. A, ¶  
28 4 (Loba Decl.). From a very young age, Loba had a feminine gender expression and was attracted

1 to men. *Id.* ¶ 10. Around the age of seven, she began to develop shame about her gender and  
2 sexual identities, after experiencing bullying at school and witnessing the disparaging manner in  
3 which her family and community members spoke about and treated people perceived to be gay.

4 *Id.* ¶¶ 4, 11.

5         24. As a child, Loba was sexually assaulted by two adult males who were family  
6 friends. *Id.* ¶¶ 12, 14–16. The first used his hands to touch Loba’s private parts multiple times  
7 over the course of her childhood. *Id.* ¶ 12. The second sexually assaulted Loba at least twice. *Id.*  
8 ¶¶ 14–16. The first time, the man took Loba to a remote shed, tied her up, attempted to forcibly  
9 penetrate her, and smeared his semen all over her body. *Id.* ¶ 15. This man later raped Loba. *Id.* ¶  
10 16. Loba did not disclose these assaults or the rape out of fear of attracting retaliation and causing  
11 harm to her family. *Id.* ¶ 17.

12         25. Around the age of 12, Loba’s family caught her kissing a boy and, soon after, put  
13 her on a flight to the United States. *Id.* ¶ 20. She entered the United States as a lawful permanent  
14 resident, and lived first with her mother, now a U.S. citizen, in Las Vegas, Nevada. *Id.* ¶¶ 4, 21.

15         26. Loba’s adolescence in the United States proved challenging. She was bullied in  
16 school for not speaking English and for being effeminate and perceived as gay. *Id.* ¶ 21. Around  
17 the age of 14 or 15, Loba tried to come out to her mother as gay. *Id.* ¶ 22. She recalls lacking  
18 “the language to describe how I felt inside or to explain that I was a transfeminine person, but I  
19 told her that I was romantically attracted to men.” *Id.* Loba’s mother subjected her to months of  
20 conversion therapy and exorcisms. *Id.* During this period, Loba struggled with suicidal ideations.  
21 *Id.* ¶ 23. She moved out of her mother’s home to live with her father, a lawful permanent  
22 resident, in the hopes of finding safety and acceptance. *Id.* ¶ 24. However, her father and his wife  
23 were struggling with drug and alcohol addiction at the time, causing further precarity for Loba.  
24 *Id.*

25         27. Loba moved out on her own at the age of 16, living on and off on the streets. *Id.*  
26 She dropped out of high school, and soon after met and developed a romantic relationship with a  
27 man named Christian, who was over ten years her senior. *Id.* ¶¶ 25–26. Their relationship  
28 initially offered Loba newfound stability. *Id.* ¶ 26. Christian supported her in finishing high

1 school and enrolling in college, and they started event planning and dance companies together.  
2 *Id.* ¶¶ 26–27. Christian also initially supported Loba in expressing her feminine gender identity  
3 for the first time in her life, including buying girly clothes, growing out her hair, and wearing  
4 makeup. *Id.* ¶ 27.

5 28. However, after an initial positive period, Christian became severely  
6 psychologically, verbally and physically abusive. *Id.* ¶¶ 28–29. He began to be controlling of  
7 Loba, monitored her text messages and calls, and demanded that she act in a more masculine  
8 way in public, reserving her makeup and heels for home. *Id.* ¶ 28. Christian also introduced Loba  
9 to substances and pressured her to use them with him. *Id.* If Loba didn’t do what Christian  
10 wanted, he locked her in the closet or bathroom for long periods of time. *Id.* On one occasion,  
11 Christian physically beat Loba so badly that she required hospitalization and emergency surgery  
12 to address shattered bones in her wrist. *Id.* ¶ 29.

13 29. In late 2017, around the age of 21, Loba found the courage to leave the  
14 relationship and started to live alone in her car. *Id.* ¶¶ 29–30. Loba remembers spiraling into  
15 substance addiction in an attempt “to numb and run away from my pain” at a time where “[t]he  
16 shame and trauma felt like it was choking me and I couldn’t seem to get up for air.” *Id.* ¶ 30.  
17 Loba tried to commit suicide twice: first by overdosing, and then again by attempting to hang  
18 herself. *Id.*

### 19 **Criminal Convictions & Rehabilitation**

20 30. In 2019, a friend of Loba asked her to watch her children while she was at work.  
21 *Id.* ¶ 32. During this time Loba was still living out of her car and mired in substance addiction.  
22 On several occasions, Loba asked one of the children to lower his underwear and show her his  
23 private parts while she photographed and videotaped him. *Id.* She touched the child’s private  
24 parts with her finger. *Id.* She was arrested in 2019 and convicted in 2020 of Cal. PC §§ 288(A)  
25 (lewd act on a child) and § 311.11(A) (possession of child pornography). Exh. Z (Criminal  
26 Disposition Documents). She was initially sentenced to six years and one year, respectively, to  
27 run concurrently. *Id.*

28 31. Loba feels deep remorse for her actions. *See* Exh. A (Loba Decl.), ¶¶ 34–35. She



acknowledges that “[t]he harm that I inflicted on B. and his family caused a disturbance of . . . a healthy state of mind for a child. I harmed that family by being a trusted adult that then betrayed that trust. I put them through a horrible turmoil [and] the stress and trauma of dealing with the situation and worrying about their son . . . . I know I experienced so much shame when an adult took advantage of me, and I worry that B. now holds that shame as well. I pray for his safety and for him to know that it was not his fault every day.” *Id.* Loba recognizes that that the consequences are irreversible, and she is committed to taking accountability.

32. During her time in prison, Loba began the work of facing herself and understanding what drove her to commit the offense, which she acknowledges is a “lifelong process of accountability and healing.” *Id.* ¶ 35. She notes that her “unhealed childhood trauma had created a confused sense of self,” and she was “unable to recognize the harm [she] was doing in the moment.” *Id.* She acknowledges that she “hurt a child in a serious and lasting way” and she “take[s] full responsibility for the impact and harm” she caused. *Id.* Beyond acknowledging and taking responsibility for the harm she caused, Loba has begun to heal from her past, and built healthy coping skills and a community of support to help her navigate future challenges. *Id.* ¶¶ 36–38, 50–51.

33. While in prison, Loba took advantage of formal rehabilitation and learning opportunities. *See, e.g.*, Exh. H (Certificate for Programming Completed in Criminal Custody). She successfully completed a substance use and co-occurring disorder treatment program. She enrolled in the Substance Abuse Prevention program (“SAP”). Exh. A (Loba Decl.), ¶ 36. Through SAP, Loba participated in group sessions around three times a week, attended Alcoholics Anonymous programming, and took classes on anger management, victim impact, and critical thinking. *Id.* In addition to dedicating herself to sobriety and personal growth, Loba also took college courses through Palo Verde Community College and worked as a porter while in criminal custody. *Id.*

34. Before she had served five years in prison, the California Board of Parole Hearings conducted interviews and a hearing process and determined that Loba was appropriate for early release. Loba was released from state custody on November 26, 2023, one year early.

1 Exh. AA (Notice of Release and Conditions of Parole). As soon as she was released, Loba  
2 complied with the requirement to register as a sex offender. *See* Exh. BB (Screenshot of Registry  
3 Profile for Loba). She also enrolled in a residential re-entry program called Orion House. Exh. A  
4 (Loba Decl.), ¶ 38. She complied with parole requirements, participated in Orion House  
5 programming, and lived at Orion House for over six weeks until she was detained by ICE.

6 35. In January 2024, Loba exited her residence at Orion House on her way to a  
7 scheduled meeting with a parole officer. Before she could get to the parole office, ICE officers  
8 detained her and took her to GSA, where she has been ever since. *Id.* As of this filing, DHS and  
9 ICE have civilly incarcerated Loba for over 491 days without any neutral adjudicator evaluating  
10 whether her detention serves a valid civil purpose. She will remain detained, with no end in  
11 sight, absent federal court intervention.

### 12 **Removal Proceedings**

13 36. ICE initiated removal proceedings on January 17, 2024, charging Loba as  
14 removable under 8 U.S.C. § 1227(a)(2)(A)(iii) for having been convicted of an aggravated  
15 felony. Exh. D (Notice to Appear). ICE determined that Loba was subject to detention without a  
16 bond hearing or any individualized determination under 8 U.S.C. § 1226(c).

17 37. On January 25, 2024, Loba appeared at her first hearing *pro se*. Exh. C (Yamane  
18 Decl.), ¶ 5. On February 29, 2024, Loba was able to obtain *pro bono* counsel to represent her in  
19 immigration proceedings. *Id.*

20 38. On May 9, 2024, Loba through counsel filed an application for protection under  
21 the CAT, based on her fear of torture if she is returned to El Salvador. *Id.* ¶ 6; Exh. E (Form I-  
22 589). In support of her application, Loba filed extensive country conditions and other evidence,  
23 including an expert affidavit from Dr. Joseph L. Wiltberger (“Dr. Wiltberger”), a cultural  
24 anthropologist with deep expertise regarding Salvadoran LGBTQ+ people’s displacement and  
25 migration. Based on Dr. Wiltberger’s review of the documents and facts in Loba’s case, he  
26 concluded that if deported, Loba “faces a very high likelihood of torture and/or murder.” Exh.  
27 W, ¶ 69 (Wiltberger Aff.).

28 39. It took nearly 12 months for the Immigration Judge to consider Loba’s application

for protection under the CAT. The immigration court conducted *eight* individual merits hearings on Loba's application between June 27, 2024 and May 1, 2025. *See* Exh. F. (Compiled Hearing Notices). Much of the time spent during these merits hearings was taken up by the DHS and the IJ conducting lengthy cross examination of Loba and expert witnesses. Exh. C (Yamane Decl.), ¶ 17. Because of the IJ's calendar, Loba often had to wait nearly two months from one hearing to the next. *Id.* ¶ 12. Counsel for Loba repeatedly requested earlier hearing dates, but the IJ confirmed that she had no earlier available dates. *Id.* ¶¶ 18–19. In addition, after all testimony was complete, the IJ delayed her provision of a final decision to Loba, and insisted on bringing the parties back to court weeks later to render an oral decision. *Id.* ¶ 20. On May 1, 2025, the IJ issued an oral decision finding Loba removable and denying all relief. Exh. CC (Order of the IJ).

40. On May 6, 2025, Loba promptly filed a notice of appeal at the BIA. Exh. DD (Form E-26). The appeal asserts that the IJ made numerous errors, including, for example: wrongly determining that Loba did not suffer past torture; wrongly determining that conditions have changed simply because Loba is now an adult, despite evidence of conditions for transgender women *worsening* in El Salvador; failing to properly weigh evidence of extensive human rights violations in El Salvador, including evidence of violence, rape, and murder of transgender women; erroneously dismissing and minimizing expert affidavits and testimony; considering the risk posed by each of Loba's characteristics—including her transgender identity, sexual orientation, outspoken advocacy for human rights, tattoo, and criminal history in the United States—separately, and not considering the heightened risk to Loba given the combination of these characteristics; and failing to act as an impartial adjudicator in violation of due process. *Id.*; Exh. C (Yamane Decl.), ¶ 26.

41. Loba's removal order is not administratively final while the BIA considers her appeal. *See* 8 C.F.R. § 1003.39. The BIA has not yet issued a transcript or briefing schedule on the appeal. Exh. C (Yamane Decl.), ¶ 28. Appeals at the BIA in detained cases can take six months or more from the date of filing until a decision. *Id.* ¶ 29. That timeline is expected to increase given the Department of Justice's recent decision to halve the number of judge slots on the BIA at the same time as there is an unprecedented backlog of more than 112,000 pending

cases at the BIA. *Id.* ¶ 31.

42. If Loba wins her appeal at the BIA, the case will likely be remanded to the IJ for further proceedings, which could take additional months or years. *Id.* ¶ 32. If the BIA dismisses Loba's appeal, she has a right to file a petition for review with the U.S. Court of Appeals for the Ninth Circuit. *See* 8 U.S.C. § 1252(b)(1). Either way, her case is likely to take many months or even years more until it is resolved. *See* Exh. C (Yamane Decl.), ¶ 32.

### **Detention**

43. During the more than 16 months that her removal case has been pending, Loba has been confined at GSA. GSA is a former California State correctional facility that was sold to a private prison corporation, GEO Group, to be used as an immigration detention center.<sup>1</sup>

44. Conditions at GSA are comparable to or worse than those in criminal corrections, with reports of pervasive rights abuses and violations of ICE's own Performance-Based National Detention Standards ("PBNDS").<sup>2</sup> People detained at GSA have described conditions as unsanitary and unlivable. For example, individuals at GSA have reported finding insects, hair, and other foreign objects in their food, including cockroaches, flies, and spiders.<sup>3</sup> Medical and mental health related violations and gaps in services are particularly pervasive at GSA.<sup>4</sup>

<sup>1</sup> *See* CENTRO LEGAL DE LA RAZA, *Report: Golden State Annex-Impacted Communities and Immigration Enforcement Trends* (July 27, 2021), <https://www.centrolegal.org/report-golden-state-annex-impacted-communities-and-immigration-enforcement-trends/>; Sam Morgen, BAKERSFIELD.COM, *ICE Expands into Former McFarland Prisons, Drastically Increasing Capabilities* (Sept. 11, 2020), [https://www.bakersfield.com/news/ice-expands-into-former-mcfarland-prisons-drastically-increasing-capabilities/article\\_6c1090a4-f3cd-11ea-b96a-c35b6c3cb2b9.html](https://www.bakersfield.com/news/ice-expands-into-former-mcfarland-prisons-drastically-increasing-capabilities/article_6c1090a4-f3cd-11ea-b96a-c35b6c3cb2b9.html).

<sup>2</sup> U.S. Senator Alex Padilla, Representative Zoe Lofgren, and other California representatives have drawn attention to disturbing detention conditions and repeatedly called for ICE to end the contract with GSA. *See* PRESS RELEASE, REP. LOFGREN, *Lawmakers Reiterate Their Call to Close the Detention Centers* (Oct. 8, 2024), <https://lofgren.house.gov/media/press-releases/lofgren-padilla-ca-dems-request-congressional-status-conference-ca-detention>. *See also* AM. CIV. L. UNION, *Resistance, Retaliation, Repression: Two Years in California Immigration Detention* (Aug. 28, 2024), <https://www.aclunc.org/publications/resistance-retaliation-repression-two-years-california-immigration-detention>; L.A. TIMES, *California Fines Detention Center Operator \$100,000 Over Immigrants' Working Conditions* (Jan. 30, 2023), <https://www.latimes.com/politics/story/2023-01-30/detained-immigrants-alleged-unsafe-working-conditions-at-california-facility-fine>.

<sup>3</sup> *See* *Starving for Justice: The Denial of Proper Nutrition in Immigration Detention*, CAL. COLLABORATIVE FOR IMMIGRANT JUSTICE, 7 (Apr. 6, 2022), [https://www.ccijjustice.org/files/ugd/733055\\_c43b1cbbdda341b894045940622a6dc3.pdf](https://www.ccijjustice.org/files/ugd/733055_c43b1cbbdda341b894045940622a6dc3.pdf).

<sup>4</sup> The California Attorney General's Office recently published its fourth immigration detention facilities report, documenting a litany of concerning conditions at GSA, from severely lacking

45. Loba's experiences at GSA align with these reports of harsh and unsafe conditions. She has observed mice in the kitchen and flies and cockroaches in her meals. Exh. A (Loba Decl.), ¶ 45. The meals have been so harmful to Loba's digestion that she was hospitalized for prolonged bouts of diarrhea. *Id.* ¶ 40.

46. Seeking to improve detention conditions and halt the facility's violations of the PBNDS, detained people at GSA have launched multiple hunger strikes.<sup>5</sup> Loba participated in several hunger strikes beginning in July 2024. *Id.* ¶ 41. However, the hunger strikes have not resulted in substantial changes to the conditions at GSA.<sup>6</sup>

47. The conditions of confinement at GSA are far worse than those in criminal custody for LGBTQ+ people. While in prison Loba was housed in an LGBTQ+ dormitory, where she felt safe sleeping and found community with other transgender women. Exh. A (Loba Decl.), ¶ 37. During this time Loba began to use "she/her" pronouns and go by her chosen name of "Loba" for the first time. *Id.* By contrast, Loba's time in detention at GSA has been rife with exclusion, harassment, and targeting in connection with her identity as a transgender woman. *See id.* ¶¶ 42–48. She is confined at GSA with men and is repeatedly misgendered by GEO staff, exacerbating her gender dysphoria. *Id.*

48. Loba has also been the victim of sexual harassment and abuse by GEO officers, as she has detailed in numerous complaints and letters to oversight authorities. *Id.* ¶¶ 43, 46–48. Male officers repeatedly subjected Loba to sexually abusive pat downs for months, including "spreading [her] legs open, pinn[ing] [her] against the wall, and rub[bing] her breasts, groin, inner thighs, and butt in a way that felt very scary, aggressive, and sexualized." *Id.* ¶ 43. She filed two Prison Rape Elimination Act ("PREA") complaints on approximately May 26, 2024,

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mental health care and poor medical care to insufficient suicide prevention and intervention and over-discipline of detainees, including punishment for making complaints. *See Immigration Detention in California: A Comprehensive Review with a Focus on Mental Health*, CAL. DEP'T OF J., 52–78 (Apr. 29, 2025), <https://oag.ca.gov/system/files/media/immigration-detention-2025.pdf>.

<sup>5</sup> See Victoria Valenzuela, *More than 60 ICE Detainees on Hunger Strike Over 'Inhumane' Living Conditions*, THE GUARDIAN (Aug. 26, 2024), <https://www.theguardian.com/us-news/article/2024/aug/26/immigration-customs-enforcement-ice-hunger-strike-california>.

<sup>6</sup> Justo Robles, *Abuse Claims Are Rife in California Detention Centers. Now the Facilities Are Poised to Expand*, THE GUARDIAN (Feb. 5, 2025), <https://www.theguardian.com/us-news/2025/feb/05/california-detention-center-abuse>.

1 and May 28, 2024, regarding these instances of sexual harassment, mistreatment, and  
 2 misgendering. *See id.* ¶¶ 43, 46; Exh. T (CRCL Compl.), 8. Loba was never interviewed about  
 3 the PREA complaints and did not receive any follow up from ICE or GEO. Exh. T (CRCL  
 4 Compl.) at 10.

5 49. On approximately June 3, 2024, Loba was placed in solitary confinement, and  
 6 was told by the officer who removed her from her housing unit that she was being separated  
 7 from the general population *because of* her PREA complaints. *Id.* at 9–10. She spent  
 8 approximately 24 days in solitary confinement. *Id.* at 9. During this time, a GEO officer  
 9 repeatedly solicited sex in exchange for early termination of her solitary confinement. *Id.* at 9;  
 10 Exh. A (Loba Decl.), ¶ 48. On one occasion, he confronted Loba while she was alone and played  
 11 with his belt buckle and unzipped his pants, gesturing as if he was planning to rape her. *Id.*

12 50. On August 27, 2024, Loba submitted a joint complaint to the DHS Office for  
 13 Civil Rights and Civil Liberties (“CRCL”), regarding the sexual abuse, gender-based harassment,  
 14 and violations of transgender care standards that she and other individuals detained at GSA had  
 15 experienced. Exh. T (CRCL Compl.). On November 25, 2024, CRCL sent a letter confirming  
 16 that it was opening an investigation into these allegations. Exh. U (CRCL Notice of Opening  
 17 Investigation). However, on February 6, 2025, CRCL abruptly closed its investigation,  
 18 explaining only that the investigation was closed “in accordance with [President Trump’s]  
 19 Executive Order, *Defending Women From Gender Ideology Extremism and Restoring Biological*  
 20 *Truth To the Federal Government.*” Exh. V (CRCL Notice of Closing Investigation).<sup>7</sup> CRCL did  
 21 not issue any findings on whether Loba and the other complainants had in fact suffered sexual  
 22 harassment or abuse or whether ICE had properly investigated their claims. *Id.* Nor did it explain  
 23 why the Executive Order precluded claims of sexual harassment or retaliation. *Id.*<sup>8</sup>

24  
 25 <sup>7</sup> See Executive Order, *Defending Women From Gender Ideology Extremism and Restoring*  
 26 *Biological Truth to the Federal Government* (Jan. 20, 2025),  
<https://www.whitehouse.gov/presidential-actions/2025/01/defending-women-from-gender-ideology-extremism-and-restoring-biological-truth-to-the-federal-government/>.

27 <sup>8</sup> The Trump Administration subsequently abruptly closed CRCL. *See* Ellen M. Gilmer, *Trump*  
 28 *Aides Shutter Homeland Security Civil Rights Office*, BLOOMBERG L. (Mar. 21, 2025),  
<https://news.bgov.com/bloomberg-government-news/civil-rights-advocates-brace-for-cuts-in-homeland-security-unit>. A complaint was recently filed alleging that closure of CRCL was unlawful. *See* Complaint, *Robert F. Kennedy Human Rights, et al. v. U.S. Dep’t of Homeland*

51. The poor conditions, harassment, and hostility Loba has encountered at GSA have had a severe impact on her mental health. Loba has been diagnosed with posttraumatic stress disorder (“PTSD”), major depressive disorder, generalized anxiety disorder, panic disorder, and gender dysphoria. Exh. X (Perez Psych. Eval.), 2. The evaluator found that the repression of Loba’s gender expression she has faced at GSA exacerbated her gender dysphoria, which in turn has aggravated her symptoms of PTSD, depression, anxiety, and panic. Exh. Y (Perez Supp. Psych. Eval.), 1–3. Loba’s history of past suicidal ideation and suicide attempts renders these harsh conditions even more dangerous. *Id.* at 3.

52. Despite these significant threats to her health, safety, and wellbeing, Loba has devoted her time in detention both to her own personal growth and rehabilitation, and to supporting other noncitizens detained at GSA. Loba has been a leader in speaking up for the rights of detained individuals, both before government agencies and in the media. *See* Exh. T (CRCL Compl.) at 8. She also uses her bilingual language abilities to “help[] monolingual Spanish speakers advocate for their needs including raising medical issues” with GSA. Exh. O (Hernandez Ltr.) at 1.

53. Loba advocated for and received the warden’s approval to organize an English as a Second Language (“ESL”) course, in which she teaches English to other individuals detained at GSA. *Id.* “[Loba] has built such a robust support network that she got two organizations to donate workbooks and other instruction materials to enhance her lesson plans.” *Id.* She has led weekly ESL classes teaching over 20 students several times per week since November 2024. Exh. A (Loba Decl.), ¶ 50; *see also* Exh. L (ESL Students’ Ltr.) (compiled letter with statements from 23 of Loba’s ESL students attesting to the positive impact her classes have had on them). She has also completed a number of trainings and programs while at GSA. Exh. I (Certificates for Programming Completed in Immigration Detention).

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*Sec.*, No. 23-1270 (D.D.C., filed Apr. 24, 2025), <https://www.citizen.org/wp-content/uploads/1-RFK-v.-DHS-complaint.pdf>.

**Release Plan**

54. Upon release from ICE custody, Loba plans to return to Orion House, the Residential Re-Entry Center in Los Angeles, CA, in which she was enrolled and in good standing before ICE arrested her. *Id.* ¶ 52. Orion House is run by Behavioral Systems Southwest Inc., a company that operates under contract with the California Department of Corrections and Rehabilitation (“CDCR”) and the California Department of Rehabilitative Services. Exh. K (King Decl.), ¶ 3. As a Long-Term Offender Reentry Recovery program, Orion House uses a social service model with evidence-based, cognitive behavioral programming that is tailored to meet the specific re-entry needs of formerly incarcerated and detained people. *Id.* ¶ 5. Orion House will provide Loba with housing and re-entry services for the first year after her release. *Id.* ¶ 8; Exh. J (Orion House Ltr.).

55. Loba is committed to maintaining her sobriety, finding steady employment, and reintegrating into her community. Exh. A (Loba Decl.), ¶¶ 52–55. In addition to Orion House’s outpatient services, she plans to enroll in Alcoholics Anonymous and Narcotics Anonymous. *Id.* ¶ 52. While at Orion House, Loba will have access to educational and vocational training, mental health support, anger and stress management classes, life skills development, housing development, and other programs. Exh. K (King Decl.), ¶ 6. Loba plans to use her time at Orion House to find stable work and save up for her own apartment. Exh. A (Loba Decl.), ¶ 54. She hopes to continue working toward a Bachelor’s Degree and ultimately an MBA. *Id.* Loba dreams of building a career in creative industries, as an event planner, dancer and choreographer, and trans-inclusive fashion designer. *Id.* ¶ 55.

56. Loba has family in the United States, including her mother, who is a U.S. citizen. Exh. G (Mother’s Ltr.). While Loba and her mother had difficulties in the past, they have worked hard to repair their relationship. Exh. A (Loba Decl.), ¶ 53. Loba’s mother has apologized for rejecting her in the past, and has visited Loba regularly throughout her detention. *Id.* She has promised to support Loba in complying with ICE and other requirements if she is released. Exh. G (Mother’s Ltr.).



57. Beyond her family in the United States, Loba has cultivated deep community support through her advocacy for the rights of fellow noncitizens detained at GSA, with a specific focus on supporting LGBTQ+ people and monolingual Spanish speakers. While recognizing her past mistakes, Loba’s community supporters also attest to her overwhelmingly positive qualities and rehabilitation. Supporters call her a “fierce,” “selfless,” and “courageous” advocate for others. Exh. M (Power Blossoms Ltr.), 1; Exh. N (California Collaborative for Immigrant Justice (“CCIJ”) Ltr.), 1; Exh. O (Hernandez Ltr.), 1–2. They also note how kind and hardworking she is. Exh. P (California Immigrant Youth Justice Alliance (“CIYJA”) Ltr.), 1 (“[Loba] is incredibly hardworking, dependable, and kind[.]”). Loba’s supporters also affirm that upon reentry she will be a “positive contributor” to society and attest that she “has so much potential and so much to contribute.” Exh. Q (SOLACE – First Unitarian Universalist Church of San Diego Ltr.), 2; Exh. O (Hernandez Ltr.) at 2.

58. More than seven organizations are willing to help with her re-entry process. *See* Exhs. M–S. One organization has offered to support Loba with financial and emotional support. Exh. M (Power Blossoms Ltr.) at 1. Another has offered to connect Loba to peer support, legal support, and non-legal support organizations. Exh. R (Asian Law Caucus Ltr.), 2. A third has offered to connect Loba to monthly meetings that foster the leadership of formerly detained individuals, and to connect Loba with accompaniment support from faith leaders, grassroots organizations, and allies. Exh. O (Hernandez Ltr.) at 1–2. Other organizations have offered broad pledges, committing to support Loba “in any shape or form” and “in whatever way” to ensure her successful re-entry. Exh. S (Interfaith Movement for Human Integrity Ltr.), 1–2; Exh. N (CCIJ Ltr.) at 1.

## **ARGUMENT**

### **I. Loba’s Prolonged Detention Without a Bond Hearing Violates Her Due Process Rights.**

#### **A. Due Process Protections Extend to All Detained Noncitizens and Require an Individualized Determination When Detention is Prolonged.**

59. “‘It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.’” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting

1 *Reno v. Flores*, 507 U.S. 292, 306 (1993)). “Freedom from imprisonment—from government  
 2 custody, detention, or other forms of physical restraint—lies at the heart of the liberty” that the  
 3 Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see also id.* at 718  
 4 (Kennedy, J., dissenting) (“Liberty under the Due Process Clause includes protection against  
 5 unlawful or arbitrary personal restraint or detention.”).

6 60. Due process requires “adequate procedural protections” to ensure that the  
 7 government’s asserted justification for physical confinement “outweighs the individual’s  
 8 constitutionally protected interest in avoiding physical restraint.” *Id.* at 690 (citations and internal  
 9 quotation marks omitted). In the immigration context, due process requires that the government  
 10 provide bond hearings to noncitizens facing prolonged detention. “The Due Process Clause  
 11 foresees eligibility for bail as part of due process” because “[b]ail is basic to our system of law.”  
 12 *Jennings v. Rodriguez*, 583 U.S. at 330 (Breyer, J., dissenting) (internal quotations and citations  
 13 omitted).

14 61. While the Supreme Court denied a *facial challenge* to section 1226(c) in *Demore*,  
 15 it has repeatedly left open the opportunity for as-applied challenges arguing that detention  
 16 without a bond hearing in a particular case violates due process. *Nielsen v. Preap*, 586 U.S. 392,  
 17 420 (2019) (remanding for consideration of as-applied constitutional claim); *Pham v. Becerra*,  
 18 717 F. Supp. 3d 877, 885 (N.D. Cal. 2024) (citing *Preap*, 586 U.S. at 420); *Perera v. Jennings*,  
 19 598 F. Supp. 3d 736, 744 (N.D. Cal. 2022) (“[J]ust because § 1226(c) does not grant the  
 20 Attorney General statutory authority to release individuals detained . . . does not mean that the  
 21 Court does not have the power to grant petitions for habeas corpus raising *as-applied*  
 22 constitutional challenges to that detention without a bond hearing.”) (emphasis added). Indeed,  
 23 the decision in *Demore* was based on the petitioner’s concession of deportability and the court’s  
 24 understanding that detentions under section 1226(c) are typically “brief.” *Demore*, 538 U.S. at  
 25 522 n.6, 528. Where a noncitizen has been detained for a prolonged period or is pursuing a  
 26 substantial defense to removal or claim to relief, due process requires an individualized  
 27 determination that such a significant deprivation of liberty is warranted. *Id.* at 532  
 28 (“determination as to [petitioner’s] risk of flight and dangerousness” may be warranted “if the

1 continued detention became unreasonable or unjustified”) (Kennedy, J., concurring). *See also*  
2 *Jackson v. Indiana*, 406 U.S. 715, 733 (1972) (detention beyond the “initial commitment”  
3 requires additional safeguards); *McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249–50 (1972)  
4 (“lesser safeguards may be appropriate” for “short-term confinement”); *Hutto v. Finney*, 437  
5 U.S. 678, 685–86 (1978) (in Eighth Amendment context, “the length of confinement cannot be  
6 ignored in deciding whether [a] confinement meets constitutional standards”).

7         62. This is not a controversial proposition; the government has conceded that  
8 prolonged immigration detention without a bond hearing eventually violates due process. *See*  
9 *Sajous v. Decker*, No. 18-cv-2447, 2018 WL 2357266, at \*24 (S.D.N.Y. May 23, 2018) (“The  
10 Court’s first conclusion is essentially conceded by the Government: that prolonged detention  
11 under § 1226(c) without providing a [noncitizen] with a bond hearing will—at some point—  
12 violate the right to due process.”). As the Ninth Circuit explained in remanding a case to the  
13 district court to determine whether due process requires a bond hearing, “[w]e have grave doubts  
14 that any statute that allows for arbitrary prolonged detention without any process is constitutional  
15 or that those who founded our democracy precisely to protect against the government’s arbitrary  
16 deprivation of liberty would have thought so.” *Rodriguez v. Marin*, 909 F.3d 252, 256–57 (9th  
17 Cir. 2018).

18         63. Courts in this district have repeatedly found that prolonged detention without a  
19 bond hearing violates due process, and have ordered a bond hearing in cases where an individual  
20 had been detained approximately as long as—or even shorter than—Loba. *See Diep v. Wofford*,  
21 No. 1:24-cv-01238-SKO, 2025 LEXIS 33818, at \*4 (E.D. Cal. Feb. 24, 2025) (ordering bond  
22 hearing when petitioner detained under § 1226(c) for 13 months); *Lopez v. Garland*, 631 F.  
23 Supp. 3d 870, 879 (E.D. Cal. 2022) (12 months, and citing cases where detentions of two  
24 months, eight months, and 11 months were found unreasonable); *see also Hilario M.R. v.*  
25 *Warden, Mesa Verde Det. Ctr.*, No. 1:24-00998-EPG-HC, 2025 U.S. Dist. LEXIS 75622, at \*21,  
26 28 (E.D. Cal. Apr. 21, 2025) (ordering second bond hearing after 14 months had passed since the  
27 first bond hearing); *A.E. v. Andrews*, No. 1:25-cv-00107-KES-SKO (HC), 2025 U.S. Dist.  
28 LEXIS 94233, at \*12, 14 (E.D. Cal. May 16, 2025) (recommending order granting bond hearing

for individual detained for approximately 20 months); *see also Jimenez v. Wolf*, No. 19-cv-07996-NC, 2020 U.S. Dist. LEXIS 16389, at \*7 (N.D. Cal. Jan. 30, 2020) (nearly 12 months).

**B. The Three-Factor *Mathews* Balancing Test Is the Correct Standard for Evaluating Due Process Challenges to Prolonged Detention.**

64. The Supreme Court in *Mathews v. Eldridge* set forth a three-factor test for evaluating due process challenges to deprivations of property or liberty interests. 424 U.S. 319, 335 (1976). The *Mathews* test 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. *Id.* Numerous courts have evaluated as-applied constitutional challenges to prolonged immigration detention using the *Mathews* test. *See, e.g., Diep*, 2025 LEXIS 33818, at \*11 (applying the *Mathews* test and granting bond hearing for individual held in prolonged detention under § 1226(c)); *Hilaro M.R.*, 2025 U.S. Dist. LEXIS 75622 at \*18 (same); *G.C. v. Wofford*, No. 1:24-cv-01032-EPG-HC, 2025 U.S. Dist. LEXIS 39773, at \*13 (E.D. Cal. Mar. 4, 2025) (same); *Sho v. Acting Field Off. Dir.*, 1:21-cv-01812 TLN AC, 2023 LEXIS 104367, at \*9–13 (E.D. Cal. June 15, 2023) (same); *I.E.S. v. Becerra*, No. 23-cv-03783-BLF, 2023 LEXIS 173280, at \*22–26 (N.D. Cal. Sept. 27, 2023) (same); *Doe v. Becerra*, No. 23-cv-02382-DMR, 2023 LEXIS 155561, at \*17–23 (N.D. Cal. Sept. 1, 2023) (same); *Rodriguez Picazo v. Garland*, No. 23-cv-02529-AMO, 2023 LEXIS 146515, at \*8–17 (N.D. Cal. Aug. 21, 2023) (same); *J.P. v. Garland*, 685 F. Supp. 3d 943, 946–49 (N.D. Cal. Aug. 7, 2023) (same); *Hernandez Gomez v. Becerra*, No. 23-cv-01330-WHO, 2023 LEXIS 60069, at \*8–12 (N.D. Cal. Apr. 4, 2023) (same); *Sales P. v. Kaiser*, No. 22-cv-03018-DMR, 2022 LEXIS 210104, at \*20–24 (N.D. Cal. Nov. 18, 2022) (same); *Jimenez*, 2020 LEXIS 16389 at \*6–9 (same).

65. Indeed, the Ninth Circuit applies *Mathews* balancing to challenges to detention under the nonmandatory detention provision because it “remains a flexible test” commonly applied by courts in the immigration context. *Rodriguez Diaz*, 53 F.4th at 1206–07. Citing *Rodriguez Diaz*, the Second Circuit has determined that due process challenges to prolonged

detention under § 1226(c) should be reviewed, case by case, under the *Mathews* framework. *Black v. Decker*, 103 F.4th 133, 147–50 (2d Cir. 2024).

66. The *Mathews* test supplies the correct standard for evaluating Loba’s due process claim. *See Rodriguez Diaz*, 53 F.4th at 1206–07; *Diep*, 2025 LEXIS 33818, at \*11; *Sho*, 2023 LEXIS 104367, at \*9.

**C. Loba’s Detention Has Become Unreasonably Prolonged Under the Mathews Balancing Test.**

67. Loba’s civil immigration detention since January 2024, without any individualized review, violates her right to procedural due process. *See Rodriguez*, 909 F.3d at 257; *see also, e.g., Diep*, 2025 LEXIS 33818, at \*11. Each of the *Mathews* factors clearly weighs in Loba’s favor.

**i. Loba Has a Significant Liberty Interest.**

68. The first *Mathews* factor weighs decisively in favor of Loba’s profound liberty interest in freedom from physical confinement. For the first prong of the *Mathews* test, the Court must consider the private interest threatened by the governmental action. 424 U.S. at 335. Here, Loba’s private interest “is the most significant liberty interest there is—the interest in being free from imprisonment.” *Black*, 103 F.4th at 151 (cleaned up); *see also Singh v. Holder*, 638 F.3d 1196, 1204 (9th Cir. 2011) (“The private interest [in] freedom from prolonged detention [] is unquestionably substantial.”). Loba has been detained without a single neutral review of her custody since January 2024, two months after the state of California released her on a grant of parole. Despite spending over 16 months in ICE jail, Loba has yet to complete her immigration court process, with a pending appeal of the IJ’s denial of protection under the CAT and no final order of removal. *See id.* at 150 (“[A]ny immigration detention exceeding six months without a bond hearing raises serious due process concerns.”) (citing *Demore*, 538 U.S. at 531, and *Zadvydas*, 533 U.S. at 700–01). She faces an indeterminate period of future confinement during her BIA appeal and any subsequent appeal to the Ninth Circuit. *See Diouf v. Napolitano*, 634 F.3d 1081, 1091–92 (9th Cir. 2011) (“When detention crosses the six-month threshold and release or removal is not imminent, the private interests at stake are profound.”); *Sho*, 2023

LEXIS 104367, at \*10 (considering the “prospect of further extended detention” as part of the private interest); *see also* Exh. C (Yamane Decl.), ¶¶ 28–32.

69. Loba’s longtime U.S. residence and extensive ties heighten her interest in freedom from imprisonment. She has lived in the United States as a lawful permanent resident for the majority of her life, since she was 12 years old. Her large extended family, including her U.S. citizen mother, has lived in the United States for decades. *See Landon v. Plasencia*, 459 U.S. 21, 34 (1982) (in applying the first *Mathews* factor, the right to “rejoin [one’s] immediate family” “ranks high among the interests of” a detained individual with longstanding ties to the United States).

70. Finally, punitive conditions in ICE jail “multiply the burden” on Loba’s liberty and strengthen her interest in being free. *See Doe v. Becerra*, 732 F. Supp. 3d 1071, 1089 (N.D. Cal. 2024) (“[H]arsh conditions multiply the burden on liberty for any given period.”). “[T]he government’s choice to detain noncitizens like [Loba] in a crowded facility, with operations outsourced to a private contractor, informs the due process consideration of how long is too long.” *Id.* As the Third Circuit has explained, if a “[noncitizen’s] civil detention under § 1226(c) looks penal, that tilts the scales toward finding the detention unreasonable,” and, moreover, as “the length of detention grows, so does the weight” given to that factor. *German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 211 (3d Cir. 2020). Loba is being held in conditions equivalent to or worse than criminal corrections at a detention center with extensively documented abusive conditions.<sup>9</sup>

71. Loba’s private interest in liberty is therefore profound, weighing strongly in favor of a bond hearing. *See, e.g., Diep*, 2025 U.S. Dist. LEXIS 33818, at \*11–12.

## **ii. The Value of the Procedural Safeguard of a Bond Hearing is High.**

72. The second prong of the *Mathews* test, the risk of erroneous deprivation of such interest through the procedures used, and the probable value of additional procedural safeguards, weighs heavily in Loba’s favor. 424 U.S. at 335.

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<sup>9</sup> *See* ¶¶ 44–51, *supra*.

73. “[T]he risk of an erroneous deprivation of liberty in the absence of a hearing before a neutral decisionmaker is substantial.” *Diouf*, 634 F.3d at 1092. Here, the “procedures used” under § 1226(c) “include no mechanism for a detainee’s release, nor for individualized review of the need for detention.” *Black*, 104 F.4th at 152. Moreover, the statute does “not take into account when the prior crime was committed, suggesting that the prior conviction may well be a poor proxy for a finding of dangerousness.” *Id.*

74. In this case, the risk of “erroneous deprivation” of Loba’s liberty is high. She has been deprived of her liberty for over 16 months without a bond hearing. It would be an “erroneous deprivation” if she remains detained even though she is not a flight risk or danger. *Demore*, 538 U.S. 510, 515 (2003); *see also Zadvydas*, 533 U.S. at 690. Loba has received no such evaluation of whether the government can justify civil detention under her individualized circumstances. Moreover, the analogous procedure that Loba *has* received, through the Parole Board evaluation process when she was in criminal custody, found that she merited early release from prison to the community. Exh. A (Loba Decl.), ¶ 33.

75. A bond hearing, in which an immigration judge explicitly considers these factors, has immense value as a safeguard for Loba’s procedural due process rights. As in *Jimenez*, where the petitioner had been detained for one year without an individualized bond hearing, here “the probable value of additional procedural safeguards—a bond hearing—is high[.]” *Jimenez*, 2020 LEXIS 16389 at \*7.

### **iii. Respondents Have No Valid Interest That a Bond Hearing Would Harm.**

76. The third *Mathews* factor also supports Loba’s petition: the government interest is weak here because the interest at stake “is the ability to detain [her] without providing [] a bond hearing, not whether the government may continue to detain h[er] at all.” *Lopez-Reyes v. Bonnar*, 362 F. Supp. 3d 762, 777 (N.D. Cal. 2019); *see also Henriquez v. Garland*, No. 5:22-cv-00869-EJD, 2022 U.S. Dist. LEXIS 106045, at \*15 (N.D. Cal. June 14, 2022) (“[T]he Government’s interest in detaining Petitioner without providing an individualized bond hearing is low.”). While the government has legitimate interests in ensuring a noncitizen’s appearance in court and protecting the community, providing a bond hearing would “do nothing to undercut those

interests.” *Black*, 104 F.4th at 153. At any ordered bond hearing, “the IJ would assess on an individualized basis whether the noncitizen presents a flight risk or danger to the community, as IJs routinely do for other noncitizen detainees.” *Id.* at 153–54.

77. Providing a bond hearing to Loba, which the government does every single day to dozens or hundreds of people, is a minimal burden, if any. Moreover, requiring Respondents to justify Loba’s detention “promotes the Government’s interest—one [courts] believe to be paramount—in minimizing the enormous impact of incarceration in cases where it serves no purpose.” *See id.* at 155 (noting that “the public interest drives analysis of the third factor” under *Mathews*) (citing and quoting *Mathews*, 424 U.S. at 347).<sup>10</sup>

78. Thus, applying the *Mathews* factors, the Court should find that due process entitles Loba to an individualized bond hearing by an IJ.

## II. Loba Is Entitled to a Constitutionally Compliant Bond Hearing.

79. Loba requests a prolonged detention bond hearing before a neutral adjudicator in which the Government bears the burden of proving her flight risk or danger by clear and convincing evidence, and that includes consideration of alternatives to detention and ability to pay a monetary bond.

80. Due process requires that the Government bear the burden of justifying continued detention in the context of civil immigration proceedings. *See Singh*, 638 F.3d at 1204 (“[D]ue process places a heightened burden of proof on the State in civil proceedings in which the individual interests at stake . . . are both particularly important and more substantial than mere loss of money.”) (internal quotation marks omitted); *see also Ixchop Perez v. McAleenan*, 435 F. Supp. 3d 1055, 1062 (N.D. Cal. 2020) (noting the “consensus view” among District Courts concluding that after *Jennings*, “where . . . the government seeks to detain [a noncitizen] pending removal proceedings, it bears the burden of proving that such detention is justified); *Gonzalez*, 2019 U.S. Dist. LEXIS 12636, at \*19 (collecting cases applying *Singh* burden of proof for

<sup>10</sup> According to ICE, the daily cost of detaining a person is “around \$152 per day.” *See* U.S. Dep’t of Homeland Sec., Immigration & Customs Enforcement, *Alternatives to Detention*, <https://www.ice.gov/features/atd> (last accessed Apr. 28, 2025). By this measure, ICE has already spent more than \$74,632 on Loba’s detention alone, without any assessment of whether it is justified by a risk of flight or danger to the community.



prolonged detention hearings post-*Jennings*); *Singh v. Barr*, 400 F. Supp. 3d 1005, 1018–19 (S.D. Cal. 2019) (determining that due process requires the government to bear the burden in immigration bond proceedings).<sup>11</sup>

81. Due process also requires consideration of alternatives to detention. The primary purpose of immigration detention is to ensure a noncitizen’s appearance during removal proceedings. *Zadvydas*, 533 U.S. at 690, 697. Detention is not reasonably related to this purpose if there are alternative conditions of release that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538–39 (1979). ICE’s alternatives to detention program—the Intensive Supervision Appearance Program (“ISAP”)—has achieved extraordinary success in ensuring appearance at removal proceedings, reaching compliance rates close to 100 percent. *Hernandez*, 872 F.3d at 991 (observing that ISAP “resulted in a 99% attendance rate at all EOIR hearings and a 95% attendance rate at final hearings”). Alternatives to detention must be considered in determining whether prolonged incarceration is warranted. *See G.C.*, 2025 U.S. Dist. LEXIS 39773, at \*26 (ordering bond hearing at which IJ considers alternative conditions of release); *M.R.*, 2025 U.S. Dist. LEXIS 75622, at \*34 (same).

82. Finally, due process requires consideration of a noncitizen’s ability to pay a monetary bond. In the immigration detention context, the Ninth Circuit has held that “[d]etention of an indigent ‘for inability to post money bail’ is impermissible if the individual’s ‘appearance at trial could reasonably be assured by one of the alternate forms of release.’” *Hernandez*, 872 F.3d at 990 (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 alternative conditions of release” to prevent against detention based on poverty. *Hernandez*, 872 F.3d at 991.

83. Here, Loba is entitled to a prolonged detention bond hearing before a neutral adjudicator in which the Government bears the burden of proving her flight risk or danger by a

<sup>11</sup> *See also G.C.*, 2025 U.S. Dist. LEXIS 39773, at \*25 (“The Court will follow the ‘overwhelming majority of courts that have held that the government must justify the continued confinement of a non-citizen detainee under § 1226(c) by clear and convincing evidence that the non-citizen is a flight risk of a danger to the community.’”) (quoting *Sanchez-Rivera v. Matuszewski*, 22-cv-1357-MMA (JLB), 2023 U.S. Dist. LEXIS 3858 (S.D. Cal. Jan. 9, 2023)).

clear and convincing evidence standard. *See Singh*, 638 F.3d at 1204. Due process additionally requires that a bond hearing include consideration of both alternatives to detention and Loba's ability to pay a monetary bond. *See Bell*, 441 U.S. at 538; *Hernandez*, 872 F.3d at 990–91. The Court should specify that a bond hearing for Loba must adhere to these due process requirements. *See, e.g., G.C.*, 2025 U.S. Dist. LEXIS 39773, at \*26; *M.R.*, 2025 U.S. Dist. LEXIS 75622, at \*34.

## **CLAIMS FOR RELIEF**

### **FIRST CLAIM FOR RELIEF**

#### **Violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution**

84. Loba re-alleges and incorporates by reference the paragraphs above.

85. 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.

86. To justify Loba's ongoing prolonged detention, due process requires that the government establish, at an individualized hearing before a neutral decisionmaker, that Loba's 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. *See Singh*, 638 F.3d at 1204 (“[D]ue process places a heightened burden of proof on the State in civil proceedings in which the individual interests at stake . . . are both particularly important and more substantial than mere loss of money.”) (internal quotation marks omitted).

87. Loba's detention has become prolonged as she has been detained for more than 16 months and faces at least additional months, and possibly years, of continued detention while her immigration case moves forward. Loba's ongoing prolonged detention without an individualized hearing at which the government has established clear and convincing evidence of flight risk or danger violates the Due Process Clause.

## **PRAYER FOR RELIEF**

WHEREFORE, Loba requests that the Court:

- 1) Assume jurisdiction over this matter;

- 2) Issue a Writ of Habeas Corpus and order Petitioner's release within 14 days, unless the Government schedules a hearing before an immigration judge where: (1) to continue detention, the Government must establish by clear and convincing evidence that Petitioner presents a risk of flight or danger, even after consideration of alternatives to detention that could mitigate any risk that Petitioner's release would present; and (2) if the Government cannot meet its burden, the immigration judge order Petitioner's release on appropriate conditions of supervision, taking into account Petitioner's ability to pay a bond;
- 3) Declare that Loba's ongoing prolonged detention violates the Due Process Clause of the Fifth Amendment;
- 4) Enjoin Respondents from causing Petitioner any additional harm during the pendency of this litigation and immigration court case, such as by transferring her farther away from her legal Counsel or placing her into solitary confinement;
- 5) Award reasonable costs and attorneys' fees under the Equal Access to Justice Act, 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.

Respectfully submitted,

Date: May 22, 2025

/s/ Etan Newman  
Etan Newman  
Elena Hodges  
PANGEA LEGAL SERVICES

*Pro Bono Attorneys for Petitioner*

**VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF  
PURSUANT TO 28 U.S.C. § 2242**

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

Date: May 22, 2025

/s/ Etan Newman

Etan Newman

*Pro Bono Attorney for Petitioner*