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UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

E.O.P.,

Petitioner

v.

TONYA ANDREWS, in official capacity, Facility Administrator of Golden State Annex Detention Facility; POLLY KAISER, in official capacity, Acting Field Office Director of the San Francisco Field Office of Immigration and Customs Enforcement; TODD LYONS, in official capacity, Acting Director of United States Immigration and Customs Enforcement; KRISTI NOEM, in official capacity, Secretary of the United States Department of Homeland Security; and PAM BONDI, in official capacity, Attorney General of the United States,

Respondents.

Case No. _____

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

Mr. E.O.P. respectfully petitions this Honorable Court for a writ of habeas corpus to remedy Mr. E.O.P.'s unlawful detention by Respondents, as follows:

INTRODUCTION

1. Mr. E.O.P.[1] ("Mr. E.O.P.") has lived in the United States for over three decades, since he was just five years old.

2. For nearly 33 months, Mr. E.O.P. has been civilly imprisoned by the U.S. Department of Homeland Security ("DHS"), Immigration and Customs Enforcement ("ICE"). During that time, he has been detained at the Golden State Annex detention center, a for-profit, locked, prison-like facility in McFarland, California.

3. ICE has detained Mr. E.O.P. under 8 U.S.C. § 1226(c), which categorically imposes indefinite civil detention without a bond hearing on the basis of prior criminal convictions for which Mr. E.O.P. already completed his sentence.

4. Since his detention by ICE began in September 2022, no neutral adjudicator has ever conducted a hearing to determine whether this lengthy incarceration is warranted based on danger or flight risk.

5. Mr. E.O.P.'s prolonged detention without a hearing on dangerousness and flight risk violates the Due Process Clause of the Fifth Amendment of the Constitution.

6. Mr. E.O.P. therefore respectfully requests that this Court issue a writ of habeas corpus and order his immediate release under any appropriate conditions, or alternatively, order his release within 21 days unless Respondents schedule a hearing before an immigration judge where: (1) to continue detention, the government must establish by clear and convincing evidence that Mr. E.O.P. presents a risk of flight or danger, and address why available conditions of supervision cannot mitigate any such risks; and (2) if the government cannot meet its burden, the immigration judge must order Mr. E.O.P. released on appropriate conditions of supervision,

[1] Mr. E.O.P. plans to file a motion to proceed under initials based on the risk of harm were his location and facts related to his application for protection under the Convention Against Torture ("CAT") known to his persecutors. Mr. E.O.P. has informed counsel for the Respondents of his name and agency number. Declaration of Mariel Villarreal, ¶ 3.

taking into account his ability to pay a bond and available alternatives to monetary bond.

JURISDICTION

7. Mr. E.O.P. is detained in the custody of Respondents at the Golden State Annex detention center in McFarland, California.

8. 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"). This 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. The federal habeas statute establishes this Court's power to decide the legality of Mr. E.O.P.'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. *I.N.S. 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)).

10. Congress has preserved judicial review of challenges to prolonged immigration detention. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 839-841 (2018) (holding that 8 U.S.C. §§ 1226(e), 1252(b)(9) do not bar review of challenges to prolonged immigration detention).

11. This Court has also found that it retains jurisdiction under 28 U.S.C. § 2241 to adjudicate habeas challenges to immigration detention that are "sufficiently independent" of the merits of removal proceedings. *Sho v. Current or Acting Field Off. Dir.*, No. 1:21-CV-01812 TLN AC, 2023 WL 4014649, at *2 (E.D. Cal. June 15, 2023), *report and recommendation*

adopted, No. 1:21-CV-1812-TLN-AC, 2023 WL 4109421 (E.D. Cal. June 21, 2023) (citing *Lopez-Marroquin v. Barr*, 955 F.3d 759 (9th Cir. 2020).

VENUE

12. 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 E.O.P. 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,'" 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)).

ORDER TO SHOW CAUSE PURSUANT TO 28 U.S.C. § 2243

13. The Court must grant the petition for writ of habeas corpus or issue an order to show cause ("OSC") to Respondents "forthwith," unless Mr. E.O.P. 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 providing swift protection from unlawful detention. The Great Writ affords "*a swift and imperative remedy* in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added); *see also Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (explaining that the habeas statute directs courts to give habeas petitions "special, preferential consideration" to allow for expeditious determination) (internal quotations and citations omitted).

EXHAUSTION

15. Mr. E.O.P. is not required to exhaust administrative remedies. Exhaustion for habeas claims is prudential rather than jurisdictional. *See Laing v. Ashcroft*, 370 F.3d 994, 997 (9th Cir. 2004); *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). Prudential exhaustion is not required if "'administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, [or] irreparable injury will result.'"). *Laing*, 370 F.3d at 1000 (internal citations omitted); *see also Hernandez*, 872 F.3d 988.

16. Here, administrative remedies would be futile, inadequate, and not efficacious for Mr. E.O.P. As an initial matter, § 1226(c) prohibits an individualized custody hearing before the immigration court, leaving him with no administrative remedy to exhaust. *See Jennings*, 138 S.Ct. at 846 (holding that § 1226(c) mandates detention without a custody redetermination hearing). No immigration judge has authority to release Mr. E.O.P. or grant him a bond hearing to evaluate the merits of his release under the statute, absent this Court's intervention. 8 U.S.C. § 1226(c). Further, exhausting his constitutional claims would be futile because the immigration courts and Board of Immigration Appeals ("BIA") lack jurisdiction to rule on the constitutionality of the Immigration and Nationality Act and immigration regulations. *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."); *see also Matter of Fuentes-Campos*, 21 I&N Dec. 905, 912 (BIA 1997) ("It is well settled that we lack jurisdiction to rule on the constitutional of the Act and the regulations we administer . . . . [E]ven if we were to perceive a constitutional infirmity in the unambiguous statute before us, we would be without authority to remedy it."). Because immigration judges do not possess the authority to provide bond hearings for noncitizens subject to detention pursuant to § 1226(c) and cannot hear constitutional arguments on the matter, any such motion filed by Mr. E.O.P. would be a futile gesture. *See Doe v. Becerra*, No. 25-cv-00647-DJC-DMC, 2025 WL 691664, at *6 n.4 (E.D. Cal. Mar. 3, 2025) ("[f]orcing Petitioner to first seek bond review when it is clear this request will be denied . . . does not serve any purpose

besides keeping Petitioner in custody for a longer period without due process.") (citing *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017))); *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.").

17. Requiring exhaustion at the immigration court and BIA would also cause Mr. E.O.P. irreparable harm in the form of additional detention and continued separation from his family, who live in the United States. *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'"); *see also 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 and noting that "[c]ourts in this district, however, have found that waiver is appropriate when detention has become prolonged"). Every day that Mr. E.O.P. remains detained causes him harm that cannot be repaired. Therefore, exhaustion here is not required.

PARTIES

18. Petitioner, Mr. E.O.P., has resided in the United States for over three decades, since he was just five years old. He is currently challenging his removal from the United States. Mr. E.O.P. was appointed *pro bono* counsel in a petition for review before the Ninth Circuit Court of Appeals. He has been detained by Respondents without a bond hearing for more than 940 days. If released from custody, Mr. E.O.P. will be on parole *and* probation.

19. Respondent TONYA ANDREWS, Facility Administrator of Golden State Annex Detention Facility, is Mr. E.O.P.'s immediate custodian. *See Rumsfeld v. Padilla*, 542 U.S 426, 435 (2004) (asserting that the proper Respondent is the warden of the facility where the Petitioner is being detained, as they possess "the ability to produce" Petitioner before the habeas court); *Doe v. Garland,* 109 F.4th 1188, 1197 n.7 (9th Cir. 2024) (*Padilla* requires that Petitioner

must name their immediate custodian as Respondent); *Le v. Field Off. Dir, S.F. Field Off.*, Case No. 1:24-cv-01272-EPG-HC, 2024 WL 4534728, at *1 (E.D. Cal. Oct. 21, 2024) (granting Petitioner leave to amend habeas petition to name Facility Administrator of Mesa Verde Processing Center as respondent to petition).

20. Respondent POLLY KAISER, Acting Field Office Director of the San Francisco ICE Field Office, is responsible for the San Francisco Field Office of ICE with administrative jurisdiction over Mr. E.O.P.'s case. She is a legal custodian of Mr. E.O.P. and is named in his official capacity.

21. Respondent TODD LYONS, Acting Director of ICE, is responsible for ICE's policies, practices, and procedures, including those relating to the detention of noncitizens. Respondent LYONS is a legal custodian of Mr. E.O.P. and is named in his official capacity.

22. Respondent KRISTI NOEM, Secretary of the DHS, an agency of the United States, is responsible for the administration and enforcement of the immigration laws. 8 U.S.C. § 1103(a). Respondent NOEM is a legal custodian of Mr. E.O.P. She is named in her official capacity.

23. Respondent PAM BONDI, Attorney General of the United States, is the most senior official in the U.S. Department of Justice ("DOJ"). She has the authority to interpret the immigration laws and adjudicate removal cases and bond hearings. *See* 8 U.S.C. § 1103(g). The Attorney General delegates this responsibility to the Executive Office for Immigration Review ("EOIR"), which administers the immigration courts and the Board of Immigration Appeals ("BIA"). Respondent BONDI is named in her official capacity.

FACTUAL ALLEGATIONS AND PROCEDURAL HISTORY

24. Mr. E.O.P. has lived in the United States since he was approximately five years old. Declaration of Petitioner ("E.O.P. Decl.") ¶ 2. Mr. E.O.P.'s family all live in Los Angeles, California, including his U.S. citizen mother, his three U.S. citizen sisters (the youngest of whom was born in the U.S.), his U.S. citizen fiancée, and his several U.S. citizen nieces and nephews. *Id.* 3. Mr. E.O.P.'s father, also a U.S. citizen, died in 2020. *Id.* ¶¶ 3, 129, 130.

25. Respondents detained Mr. E.O.P. on September 22, 2022, pursuant to 8 U.S.C. § 1226(c), which authorizes ICE to exercise civil custody over certain individuals during their removal proceedings without first making a showing of flight risk or dangerousness to a neutral arbiter. Declaration of Priya Patel ("Patel Decl.") ¶ 4. ICE has incarcerated Mr. E.O.P. in prison-like conditions ever since, at the Golden State Annex, an ICE facility owned and operated by the GEO Group, Inc. ("GEO Group"), a private prison corporation. E.O.P. Decl. ¶¶ 104, 109-12.

26. In Golden State Annex, people are detained in dormitory-like rooms for about 21 hours-a-day. Patel Decl. ¶ 40. The dormitories afford those detained there with little to no privacy and are populated with about 60 bunkbeds in rows spaced approximately 48 inches apart from one another. *Id.* The facility keeps bright, fluorescent lighting on in the dormitories and other areas within Golden State Annex for 24 hours a day. *Id.* People detained in Golden State Annex have reported being deprived of basic necessities, including food, water, clothing, and toiletries. *Id.* ¶¶ 32, 34, 43.

27. ICE's Performance-Based National Detention Standards ("PBNDS") mandate standards that GEO must follow in its management of Golden State Annex related to conditions of confinement, programmatic operations, and facility management.[2] However, these standards are routinely neglected and affirmatively broken, resulting in numerous harms to the individuals detained at Golden State Annex, including Mr. E.O.P.[3] *Id.* ¶¶ 30-31 ("inadequate healthcare including mental healthcare, overuse of solitary confinement, poor quality and safety of food, air quality, presence of mold, lack of consistent access to clothing and shoes, unwarranted use of force by staff, and sexual assault and harassment."). For instance, from July 1, 2024, through October 31, 2024, there were reports of 784 violations of the PBNDS at Golden State Annex. *Id.*

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[2] Department of Homeland Security, Immigration and Customs Enforcement, *2011 Operations Manual ICE Performance-Based National Detention Standards* (Rev. 2016) (last accessed June 11, 2025), https://www.ice.gov/detain/detention-management/2011#.

[3] *See generally* California Department of Justice ("Cal DOJ"), *2025 Report: Immigration Detention in California – A Comprehensive Review with a Focus on Mental Health* (rev. May 2025) at pp. 52-78, https://oag.ca.gov/system/files/media/immigration-detention-2025.pdf.

¶ 35. An increase in the population at Golden State Annex since October 2024 has led to a continued deterioration of conditions within the facility. *Id.* ¶ 45.

28. Even though Mr. E.O.P. has now been detained for nearly two years and nine months in prison-like conditions, he has never had a bond hearing before a neutral decisionmaker to determine whether his prolonged detention is justified based on present dangerousness or flight risk. *Id.* ¶ 4.

Mr. E.O.P.'s Traumatic Childhood: Abuse and Neglect

29. When Mr. E.O.P. was about two old, his parents left him in Honduras in the care of his aunt, uncle, and one of his older sisters. E.O.P. Decl. ¶ 1. His other older sister lived with a family friend elsewhere. *Id.* At approximately five years old, Mr. E.O.P. and his two sisters migrated to the United States to live with their parents. *Id.* ¶ 2.

30. Upon arriving in the U.S., some of Mr. E.O.P.'s first interactions with his father were colored by his father's alcohol use. *Id.* ¶ 4. By eight years old, Mr. E.O.P. was fully cognizant of his father's abuse of alcohol. *Id.* Mr. E.O.P. noticed his father's increase in drinking coincide with difficult stressors that the rest of the family was also made to face: eviction from their family's rented home, and relocation to East Los Angeles, where gang violence was a regular occurrence. *Id.* ¶ 5.

31. As Mr. E.O.P.'s father's drinking worsened, so did his treatment of his family. *Id.* ¶ 6. Mr. E.O.P.'s father was abusive—verbally and physically—to Mr. E.O.P., his siblings, and his mother. *Id.* Mr. E.O.P.'s father used derogatory language to refer to Mr. E.O.P., calling him "miserable" or "son of a bitch," and told Mr. E.O.P. he was worthless and should have never been born. *Id.* ¶¶ 7, 10. One time, Mr. E.O.P.'s father threw a full can of beer at Mr. E.O.P.'s head, missing it only because Mr. E.O.P. ducked. *Id.* ¶ 11. Once, as a threat to Mr. E.O.P. to behave, his father showed him a revolver-style gun he was carrying and told him there were "bigger AK-47 style rifles" in the garage, insinuating that he would use them against Mr. E.O.P. if need be. *Id.* ¶¶ 25–26. Sometimes, Mr. E.O.P.'s father's drunken rages resulted in threats that he would "kill the entire family" if they called and alerted the police to the weapons he

possessed. *Id.* ¶ 28.

32. Mr. E.O.P. witnessed his father abuse his mother starting from a young age, and though he tried to intervene at times, he too was overpowered by his father and could not stop his father from acting violently or protect his mother as he desired. *Id.* ¶ 7. Mr. E.O.P.'s siblings also suffered the abuses of their father. *Id.* ¶ 13. One of Mr. E.O.P.'s sisters eventually ran away from home because she could no longer stomach the ongoing abuse by their father. *Id.*

33. There was no peace in Mr. E.O.P.'s household. Mr. E.O.P.'s only escape from his father's abuse and his mother's inability to protect him was playing in the streets with other children in his apartment complex and in the neighborhood. *Id.* ¶ 14. However, being outside in Mr. E.O.P.'s neighborhood growing up came with its own risks, as Mr. E.O.P. lived in a neighborhood where gangs and gang violence were prevalent. *Id.* ¶¶ 5, 15. His parents had trained him and his siblings to drop to the floor when they heard gunshots, and they covered their windows with pillows, believing they might stop bullets from entering the house. *Id.* ¶ 15. School was also not a place of refuge for Mr. E.O.P. *Id.* ¶ 16. At school, he was constantly bullied, including for being in English as a Second Language ("ESL") classes. *Id.*

34. In the face of these numerous life stressors while only a child, Mr. E.O.P.'s performance in school declined, and he began to rebel. *Id.* ¶ 17. Mr. E.O.P. began to learn that if he acted like a troublemaker in school, he would earn respect from some of the children around him. *Id.* ¶ 18. It was only a modicum of control—and defiance—he could exert outside his home, where he was otherwise abused and had no control whatsoever. Still, while it prevented some of the bullying he experienced, it never stopped it completely. *Id.* ¶¶ 18-19.

Mr. E.O.P.'s Exposure to Gangs and Struggles with Alcohol and Substance Abuse

35. Mr. E.O.P. was in close quarters with gang members from a very young age. At home, in his apartment complex and neighborhood, Mr. E.O.P. was living amongst gang members. *Id.* ¶¶ 5, 15. Throughout his earlier school years, Mr. E.O.P. was surrounded by the younger siblings of gang members. *Id.* ¶ 20. As he grew up, he was surrounded by adolescent boys who had chosen to become gang members and who inflicted violence on Mr. E.O.P. and his

schoolmates. *Id.* ¶¶ 20-21, 30-33.

36. In high school, Mr. E.O.P. first experienced deep depression but refused to share this with anyone—instead remembering what his father told him when he would beat him as a little boy, things like, "only cowards and women cry." *Id.* ¶ 34. He lacked self-esteem and felt worthless, as his father had told him. *Id.* In this state, Mr. E.O.P. found himself in a very vulnerable place.

37. At this point, Mr. E.O.P. began experimenting with alcohol and drug use. He had grown up around both: alcohol was always present—and abused—in his home, and drugs were being offered and sold in his neighborhood and at school. *Id.* ¶¶ 40-45. His peers were using both. *Id.* ¶ 42. Mr. E.O.P. began using regularly and soon became addicted. *Id.* ¶¶ 42-43. During his decline, Mr. E.O.P.'s mother sent him to a three-month boot camp for at-risk youth, interrupting his destructive surroundings and patterns. *Id.* ¶ 46. Mr. E.O.P. excelled in the boot camp; he became sober and was promoted to a leadership position. *Id.* ¶ 47. However, upon returning home from the boot camp, Mr. E.O.P. was enrolled in a continuation school where he was thrown right back into the injurious surroundings that he had grown up in. *Id.* ¶¶ 48-49. He watched his peers use drugs in the restrooms and even in class, and he was constantly offered them. *Id.* There was no adult giving him the guidance he needed, and eventually he relapsed. *Id.* ¶ 49.

38. Acknowledging how deeply his addictions impaired his decision-making and reasoning, it was during this period that Mr. E.O.P. decided to join a gang. *Id.* ¶ 44-45.

39. As a teenager, gang members in his surroundings began to approach Mr. E.O.P. more often, attempting to recruit him. *Id.* ¶ 36. Ultimately, Mr. E.O.P. decided to join his neighborhood's gang. *Id.* ¶ 37. In making this decision, he desired a feeling of protection, escape from his abusive father, and a cure to the deep loneliness he felt. *Id.* ¶ 38. He felt a sense of "belonging and worthiness" from the gang that he had not experienced before. *Id.* These were powerful feelings for a young adolescent boy who had otherwise been told he was worthless by his own father. *Id.* However, in retrospect, Mr. E.O.P. saw how this was a false sense of security

and belonging. *Id.* ¶ 39.

40. Mr. E.O.P. was first arrested after his relapse for breaking into a car and stealing some things from inside. *Id.* ¶ 50. He received probation but after several "dirty" drug tests, he was sent to juvenile hall, which he described as "chaotic," and found that most of the children who entered came out worse than when they entered. *Id.* ¶¶ 51-52. He was also convicted of vandalism when he was approximately 17 years old and turned 18 while serving his time in juvenile hall. *Id.* ¶ 53.

Mr. E.O.P.'s Gang-Related Convictions and Six-Year-Fight in Pretrial Detention

41. After Mr. E.O.P. and some fellow gang members were shot at when he was approximately 19 years old, he was given a firearm by another gang member for protection. *Id.* ¶¶ 54-56. He was arrested and ultimately convicted of possession of a firearm, for which he served approximately two months in jail with three years' probation. *Id.* ¶ 57. When he got out of jail in spring 2005, he was given another firearm by the gang for protection. *Id.* ¶ 58. To avoid carrying it on his person, he hid the weapon in the apartment complex where he lived. *Id.* After a police search, Mr. E.O.P. was again arrested but the charges were dropped because he was not in possession of the weapon. *Id.*

42. On August 30, 2005, Mr. E.O.P. was arrested a third time after a police raid of his apartment complex. *Id.* ¶ 59. He was told he was being charged with driving a vehicle linked to a murder, but a charge of conspiracy to commit murder was later included because the second weapon he had been provided by the gang was allegedly used in a homicide. *Id.*

43. Mr. E.O.P. was suddenly facing a sentence of life without parole for a homicide he did not commit. *Id.* ¶ 60. This felt incomprehensible and devastating to Mr. E.O.P., and he was determined to fight his case. *Id.* He spent six-and-a-half years fighting his case from the county jail, where he was on 23-hour lock down. *Id.* ¶¶ 60, 69.

44. Mr. E.O.P. was represented by the public defender's office but decided to represent himself *pro se* because his attorneys were telling him to agree to a life sentence that he refused to accept. *Id.* ¶ 60. When he was finally set to go to trial in 2012, he hired a private

defense attorney, Mr. Edward Esqueda. *Id.* ¶ 61. During a pre-trial hearing, the judge told the district attorney (DA) to offer a better plea to Mr. E.O.P., so that he could "have a chance to have a family one day." *Id.* The DA offered a new deal with a 20-year sentence, and still Mr. E.O.P. wanted to fight his case rather than spend 20 years in prison for a homicide he did not commit. *Id.* However, when Mr. Esqueda was explaining the difficulties of trial, he began to tear up and told Mr. E.O.P. that he risked a 50-year to life sentence by going to trial. *Id.* He wanted Mr. E.O.P. to take the plea deal. *Id.*

45. Ultimately, Mr. E.O.P. was swayed by his defense attorney's own emotion at the risk and punishment Mr. E.O.P. could face; he signed a plea agreement for voluntary manslaughter with a sentence of 20 years and eight months in February 2012 (later amended to 17 years and 8 months because the 20-year sentence was illegally imposed). *Id.* ¶ 62. The plea Mr. E.O.P. agreed to was a factual basis plea that included two factual admissions. *Id.* ¶ 63. Both admissions were avowals that Mr. E.O.P. had *not* committed or participated in any of the shootings that the weapons the gang gave him were used in. *Id.* He had never shot anyone and was grateful to have that much on the record. *Id.* Still, Mr. E.O.P. was overwhelmed with fear and anxiety about going to prison; he felt like the life had been sucked out of him. *Id.* ¶ 64.

Mr. E.O.P.'s Rehabilitation Journey: Reconnecting to God, and Dropping Out of the Gang

46. Upon his arrival in county jail, Mr. E.O.P. was automatically categorized as part of the "Southsider" gang, due to his race, ethnicity, and the area of California that he grew up in. *Id.* ¶¶ 67-68. Entirely focused on fighting his criminal case—while also spending approximately 23 hours a day inside his cell—Mr. E.O.P. largely removed himself from involvement in the gang culture and politics around him in jail. *Id.* ¶ 69.

47. As time passed and Mr. E.O.P.'s criminal case was ongoing, he entered a "very dark place," filled with stress, loneliness, and worry. *Id.* ¶ 70. Mr. E.O.P. was confronting one of the hardest moments in his life, feeling extremely vulnerable and desiring something different for himself. *Id.* This time, instead of falling further into dangerous and risky behavior, Mr. E.O.P.

returned to an older support system that he had lost as a child: Christianity. *Id.* ¶¶ 71-75. Mr. E.O.P. turned back to his faith in God and began to form a close relationship with a volunteer named Greta, who shared readings on Christianity with individuals in the county jail, and with whom Mr. E.O.P. began to discuss God, the Bible, and the difficult childhood that had taken him away from the religious path he was rediscovering. *Id.* ¶¶ 71-72, 75.

48. Through his growing relationship with his faith, Mr. E.O.P. questioned more and more the gang culture he had once thought might save him as an adolescent. *Id.* ¶¶ 76-79. He realized instead that the gang was built on falsehoods and contradictions. *Id.* ¶¶ 76-78. The sense of comradery and brotherhood was in fact created by making enemies out of people that were not actually their enemies. *Id.* ¶ 78. Violence was promoted as a path to power, but it only caused pain and harm to everyone involved. *Id.* ¶¶ 77, 79. Substance use was the same. *Id.* Mr. E.O.P. reckoned with the choices he made in joining a gang and the deep remorse he felt for the "ripple effects" these choices had on himself, his family, and those around him. *Id.* ¶¶ 79, 80.

49. Mr. E.O.P.'s separation from the gang was gradual but determined and achieved it during his incarceration. *Id.* ¶ 81. He "stepped into manhood and maturity and decided [he] was done." *Id.*

50. Mr. E.O.P.'s rehabilitation and sobriety is intimately bound up with what he deems as his liberation through religion. *Id.* ¶¶ 98-100. Throughout his incarceration while serving his sentence, Mr. E.O.P. committed to Bible studies and sought to live his life through the teachings that the Bible propounds. *Id.* ¶ 88. He found that the Bible gave him the guidance he had been lacking his whole life. *Id.* Reconnecting to his faith, coupled with other classes he took while incarcerated, helped Mr. E.O.P. understand how his difficult upbringing had led him to the choices he made. *Id.* ¶ 85. It helped Mr. E.O.P. take responsibility for those choices. *Id.*

51. Mr. E.O.P. proceeded to take numerous correspondence courses with various ministries. *Id.* ¶¶ 89-90; *see* Exhs. F, G, O, Q, R, S. This included one *28-lesson* correspondence course with Follow Up Ministries International on Scripture Investigation, which Mr. E.O.P. affirms taught him not only how to read the Bible but also "how to analyze and decipher it," and

"how to apply it in [his] life." E.O.P. Decl. ¶ 90; Exh. G.

52. In addition to pursuing his Christian faith, Mr. E.O.P. also actively participated in rehabilitative programming that was available to him. E.O.P. Decl. ¶ 91-97. This included taking courses offered through the Amity Foundation, an organization working with incarcerated people to help them achieve rehabilitation and personal transformation, such as: Understanding and Reducing Angry Feelings, Thinking for a Change, and Victim Impact/Listen and Learn. *Id.* ¶¶ 91-92; Exh. I. He was even awarded Student of the Month in his cohort. Exh. J. Mr. E.O.P. also began the Gang Awareness and Recovery correspondence course coordinated by the Partnership for Re-Entry Program (PREP), which helped him understand even more about gang culture and why, as a young boy living in an abusive household, he had made the poor choice to join a gang. E.O.P. Decl. ¶¶ 93-97; Exh. M.

53. While incarceration was trying for Mr. E.O.P., it was "not a complete negative." E.O.P. Decl. ¶ 98. Mr. E.O.P.'s rehabilitation journey coincided with his incarceration, and it has been profoundly important to him. *Id.* Mr. E.O.P. found that, when he was addicted to alcohol, drugs, and a negative lifestyle, he was "enslaved" to it." *Id.* ¶ 99. Through his faith and his deep dive into Bible studies, Mr. E.O.P. felt like was able to gain freedom in his mind and spirit despite his physical confinement. *Id.* ¶ 100. It is this feeling of liberation that has solidified Mr. E.O.P.'s continued commitment to rehabilitation, sobriety, and his Christian faith. *Id.* ¶ 101.

Mr. E.O.P.'s Release from Prison on Parole and

DHS's Subsequent Arrest and Detention of Mr. E.O.P. in Punitive Conditions

54. Mr. E.O.P.'s release on parole from prison was set for September 26, 2022. *Id.* ¶ 102. On September 22, 2022, Mr. E.O.P. was awoken by a correctional officer telling him he needed to report to the medical unit. *Id.* As he approached the medical unit, he was told he should report to the release area and that he would not be returning. *Id.* Mr. E.O.P. believed he was being released early and felt ecstatic. *Id.* However, after signing his parole papers, an ICE agent approached Mr. E.O.P. and instead took him to ICE detention. *Id.*

55. Mr. E.O.P. was transferred to the Golden State Annex ICE detention facility,

located in McFarland, California. *See* Exh. B. The transfer left him utterly devastated. E.O.P. Decl. ¶¶ 102-03. He had spent his whole adult life behind bars, paying his debt to society; yet, instead of the release he had been anticipating, he was placed behind a new set of bars in immigration detention, run by GEO Group, a private prison company. *Id.* ¶ 103-04. Being detained at Golden State Annex for over two-and-a-half years has taught Mr. E.O.P. that "immigration detention is worse than prison." *Id.* ¶ 109. Some of the conditions issues at Golden State Annex that have been documented include but are not limited to: "inadequate healthcare including mental healthcare, overuse of solitary confinement, poor quality and safety of food, air quality, presence of mold, lack of consistent access to clothing and shoes, unwarranted use of force by staff, and sexual assault and harassment." Patel Decl. ¶ 30.

56. Upon his transfer to Golden State Annex, Mr. E.O.P. found that several dorms were engaged in a labor strike, protesting hazardous working conditions and labor exploitation—including being paid only one dollar per day to perform maintenance work at the detention centers.[4] E.O.P. Decl. ¶ 105. As months passed, Mr. E.O.P. experienced firsthand and witnessed the poor treatment of his dormmates by guards, and suffered the other degrading conditions that they lived and worked in. *Id.* ¶¶ 106-108; *see also* Patel Decl. ¶¶ 32-39.

57. For instance, in response to a complaint filed by detained workers alleging labor violations based on hazardous and unsafe working conditions, the California Division of Occupational Safety and Health ("Cal/OSHA") started an investigation into labor practices at Golden State Annex.[5] *See* Patel Decl. ¶¶ 31(a), 41(c). Cal/OSHA completed the investigation and issued six citations against GEO Group for unsafe working conditions, resulting in a $104,000 fine.[6]

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[4] Jhavala Romero, Farida, "Immigrant Detainees Strike Over Working Conditions, California Regulators Investigate" (June 22, 2022), https://www.kqed.org/news/11917597/immigrant-detainees-strike-over-working-conditions-california-regulators-investigate.

[5] Cal/OSHA, Inspection: 1609228.015 – The Geo Group, Inc. Dba Golden State Annex (last accessed June 11, 2025), https://www.osha.gov/ords/imis/establishment.inspection_detail?id=1609228.015.

[6] *Id.*

58. Other official complaints regarding retaliation and deplorable detention conditions at Golden State were submitted to the DHS Office for Civil Rights and Civil Liberties ("CRCL"), resulting in *three* follow-up letters from U.S. Congressmembers addressing then-Secretary of DHS and then-Acting Director of ICE, requesting an investigation into the "disturbing conditions and abusive and retaliatory behavior"[7] toward detained individuals and calling for a termination of the contracts with GEO Group upon confirmation of the allegations in the official complaints.[8, 9]. *See* Patel Decl. ¶ 31(b). DHS and ICE officials never responded with an investigation or review of GEO's practices or detention conditions.

59. Most recently, the California Department of Justice ("Cal DOJ") issued an investigative report on the provision of mental health care in all ICE detention facilities across the state, highlighting numerous findings against Golden State Annex, including: lack of proper mental health treatment and planning, over-disciplining that included punishment for making complaints, insufficient suicide prevention and interventions, and lack of safety planning.[10] *Id.* ¶ 31(d).

60. In February 2023, the labor strike escalated to a hunger strike, and Mr. E.O.P. joined in solidarity. E.O.P. Decl. ¶ 105. He witnessed further violent retaliation against several of his fellow hunger strikers, who were attacked and then forcibly transferred to El Paso, Texas,

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[7] Press Release: "Lofgren, Padilla, Correa, CA Dems Call for DHS Investigation of CA Detention Centers Following Allegations of Abusive & Retaliatory Behavior Toward Detainees" (Sept. 14, 2022), https://lofgren.house.gov/media/press-releases/lofgren-padilla-correa-ca-dems-call-dhs-investigation-ca-detention-centers.

[8] Congressional Letter to DHS and ICE (May 4, 2023), https://lofgren.house.gov/sites/evo-subsites/lofgren.house.gov/files/evo-media-document/5.4.23%20Final%20Detention%20Centers%20Conditions%20Letter_0.pdf.

[9] Congressional Letter to DHS and ICE (Oct. 8, 2024), https://lofgren.house.gov/sites/evo-subsites/lofgren.house.gov/files/evo-media-document/10.8.24%20-%20Letter%20-%20Dangerous%20Conditions%20at%20GEO%20Detention%20Centers.pdf.

[10] Cal DOJ, *2025 Report: Immigration Detention in California – A Comprehensive Review with a Focus on Mental Health* (rev. May 2025) at pp. 52-53, https://oag.ca.gov/system/files/media/immigration-detention-2025.pdf.

where they were threatened with force feeding.[11] *Id.* ¶ 106. The pattern of retaliation by GEO guards for detained individuals' peaceful protest has continued throughout Mr. E.O.P.'s civil detention.[12] *Id.* ¶¶ 107-08; *see also* Patel Decl. ¶¶ 34-36. The little yard time they have is reduced, and protestors, including Mr. E.O.P., are threatened with transfer or solitary confinement.[13] E.O.P. Decl. ¶ 108. Over the 32 months that Mr. E.O.P. has been detained, he has submitted grievances at Golden State Annex, seeking redress for poor conditions, lack of resources, inappropriate treatment by GEO guards, or medical neglect. *Id.* ¶¶ 110-11 Instead of seeing improvements, Mr. E.O.P. has seen things get worse. *Id* ¶ 112.

Mr. E.O.P.'s Continued Rehabilitation in ICE Detention

61. Despite the punitive conditions in which Mr. E.O.P. lives in ICE detention, he has continued to pursue a "positive path," and he is committed to "learn[ing] new things" and "help[ing] others along the way." *Id.* ¶ 113; *see* Exhs. K–V. To achieve this, he has taken advantage of the limited programming available to him, including taking 49 classes offered through the tablets in his dorm, such as: Adapting to Change, Contentious Relationships, Bringing the Full Power of Science to Bear on Drug Abuse & Addiction, Offender Corrections, Anger Management, Conflicts of Interest, Offender Responsibility, Critical Thinking and Decision-Making, and Cognitive Awareness. E.O.P. Decl. ¶ 114; *see* Exh. K. He took advantage

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[11] Hendricks, Tyche, *KQED*, "ICE Abruptly Transfers 4 Detainee Hunger Strikers From California to Texas, Sparking Fears of Force-Feeding" (Mar. 9, 2023), https://www.kqed.org/news/11943030/ice-aburptly-transfers-4-detainee-hunger-strikers-from-california-to-texas-sparking-fears-of-force-feeding (documenting a parallel forced transfer of hunger strikers at Golden State's neighboring ICE detention facility, the Mesa Verde ICE Processing Center, where several other detained workers were on hunger strike after months of unmet demands from their labor strike).

[12] Cal DOJ, 2025 Report: *Immigration Detention in California – A Comprehensive Review with a Focus on Mental Health* (rev. May 2025) at p. 71, https://oag.ca.gov/system/files/media/immigration-detention-2025.pdf ("In response to Cal DOJ's survey, three attorneys reported that four of their clients had been subjected to discipline while detained at Golden State in retaliation for submitting grievances regarding the conditions at the facility or for participating in a hunger strike. The punished detainees were either denied use of the commissary or other loss of privileges or were transferred to restrictive housing.").

[13] *Id.*

of other Life Skills courses offered through the Golden State Annex Custody Resource Coordinator program. *See* Exhs. L, U.

62. Mr. E.O.P.'s Bible studies have also persisted. E.O.P. Decl. ¶¶ 115-20. He has completed several other Bible studies courses through outside ministries, each consisting of numerous individual classes. *Id.* ¶¶ 115-17; *see* Exhs. O, Q, R, S. He started a prayer circle in his dorm that several other dorms adopted as a model. E.O.P. Decl. ¶ 118. He also advocated with officers at Golden State Annex for himself and his dormmates to participate in a Bible Leadership college course that is offered online. *Id.* ¶ 120. His request was approved, and he and his dormmates were able to participate together via a projector. *Id.*

63. Mr. E.O.P.'s commitment to his rehabilitation and successful, eventual reintegration into society is tangible. *Id.* ¶¶ 122-25. From ICE detention, Mr. E.O.P. proactively sought organizations and programming *outside* the limited options in ICE detention. Mr. E.O.P. began working with a group in Los Angeles called the Anti-Recidivism Coalition (ARC), an organization that supports formerly incarcerated individuals upon their release with both continued rehabilitation and reintegration. *Id.* ¶ 126; *see also* Exhs. N, V. With ARC, Mr. E.O.P. has completed numerous classes that they offer amongst their self-help programming, including Gang Members Anonymous, Alcoholics Anonymous, Celebrate Recovery, PREP, Anger Management, and Getting Out by Going In (GOGI). E.O.P. Decl. ¶ 126; Exh. N. ARC offered to support Mr. E.O.P.'s transition back into the community with employment, housing, and any other reentry resources he may need. *Id.*

64. Approximately one year ago, from ICE detention, Mr. E.O.P. also started working with another reentry group in Los Angeles called the Mass Liberation Reentry Hub, an organization offering job training and skills for individuals being released from prison. *Id.* ¶ 127; *see also* Exh. T. Mr. E.O.P. completed their online reentry course covering over 50 topics with four core modules that include: technology, fundamental of housing, fundamentals of self, and ID and civic engagement. E.O.P. Decl. ¶ 127; Exh. T. The Mass Liberation Reentry Hub has also offered to help Mr. E.O.P. with finding a job, getting a license, and other reentry services. *Id.*

65. In his own words, Mr. E.O.P. states that he has been through a lot in the last 19-and-a-half years, but most important to his future is that he "rediscovered and recommitted [him]self to God, to a better path, to finding [him]self, and to being the person [he] want[s] to be." *Id.* ¶ 123. To that end, he has taken advantage of internal and external religious classes and learning opportunities while in criminal and immigration custody. *See* Exhs. E–V. Mr. E.O.P.'s progress report prepared by officials at the Golden State Annex, dated January 27, 2025, notes his achievements in detention, as well as the fact that he has "obeyed all the rules and [has] not gotten in any trouble nor any write ups" and that he is "very respectful with staff." Exh. U. Knowing that he was deprived of the guidance and support her needed as a child and adolescent, Mr. E.O.P. has "slowly learned the value that [he does] have as a person," and he desires his physical freedom to "put it all—and [him]self—to good use." E.O.P. Decl. ¶ 123.

Removal Proceedings before EOIR

66. In the 1990's, Mr. E.O.P. came to the U.S. at approximate five years of age. Patel Decl. ¶ 6; E.O.P. Decl. ¶ 2. In 2002, Mr. E.O.P.'s father began the application process for Mr. E.O.P. to receive permanent residence. Patel Decl. ¶ 7. The application was rendered incomplete due to a missing signature. *Id.* As a minor, Mr. E.O.P. was provided a Social Security Number and lawful work authorization. *Id.*

67. On September 22, 2022, upon Mr. E.O.P.'s release from state custody, ICE took him into custody and transferred him to the Golden State Annex ICE detention facility. *Id.* ¶ 8. That same day, DHS instated removal proceedings against Mr. E.O.P. with the issuance of a Notice to Appear ("NTA"). *Id.*; *see also* Exh. A.

68. Mr. E.O.P.'s first hearing occurred on October 4, 2022, before the Van Nuys Immigration Court. Patel Decl. ¶ 9. He appeared with private counsel, Ms. Leslie Reyes, who entered her appearance with the immigration court on the day of his hearing, October 4, 2022. *Id.* At the hearing, the IJ scheduled Mr. E.O.P. for an Individual Calendar Hearing via video teleconference on November 29, 2022. *Id.*

69. On November 11, 2022, Mr. E.O.P., through his attorney Ms. Reyes, filed with

the Immigration Court his Application for Asylum, Withholding, and protection under the Convention Against Torture ("CAT") (Form I-589), along with some supporting documents and evidence. *Id.* ¶ 10.

70. Mr. E.O.P. appeared for his scheduled Individual Calendar Hearing on November 29, 2022, before IJ Kevin Riley. *Id.* ¶ 11. At the hearing, Mr. E.O.P.'s counsel, Ms. Reyes, requested a continuance due to illness. *Id.* The IJ continued the hearing until January 4, 2023. *Id.* On December 19, 2022, Ms. Reyes filed a Motion for Video or Telephonic Appearance, which the IJ granted on December 29, 2022. *Id.* ¶ 12.

71. Mr. E.O.P.'s Individual Calendar Hearing proceeded on January 4, 2023. *Id.* ¶ 13. Due to time limitations, the IJ scheduled another Individual Calendar Hearing via video teleconference to issue his decision on January 23, 2023. *Id.* At this hearing, the IJ issued his oral decision, finding Mr. E.O.P. to be credible but denying all relief and ordering Mr. E.O.P.'s removal to Honduras. *Id.* ¶ 14.

72. Mr. E.O.P., through his counsel Ms. Reyes, timely filed a Notice of Appeal of the IJ's decision with the BIA on February 17, 2023. *Id.* ¶ 15. On March 8, 2023, the BIA issued a briefing schedule with a deadline of March 29, 2023. *Id.* On March 28, 2023, Ms. Reyes filed a request for an extension of the BIA briefing schedule, which the BIA granted, extending the filing deadline to April 19, 2023. *Id.* ¶ 16.

73. DHS filed a Motion for Summary Affirmance with the BIA on April 17, 2023. *Id.* On April 19, 2023, Ms. Reyes, submitted a five-and-a-half-page brief in support of his appeal to the BIA. *Id.*

74. On July 18, 2023, Temporary Appellate IJ Erika Borkowski affirmed IJ Riley's denial of Mr. E.O.P.'s relief and dismissed his appeal. *Id.* ¶ 17.

75. Following the dismissal of his appeal, Mr. E.O.P., *pro se*, filed a petition for review of the BIA's dismissal with the Ninth Circuit, along with motions to stay removal, to proceed *in forma pauperis,* and for appointment of counsel. *Id.* ¶ 18. Per Federal Rule of Appellate Procedure 27-11, briefing on the merits of Mr. E.O.P.'s petition for review was stayed

pending adjudication of the motion for appointment of counsel. *Id.*

76. Around this time, Attorney Priya Patel, one of undersigned counsel's colleagues at the California Collaborative for Immigrant Justice, communicated with Mr. E.O.P. through her capacity as a lawyer providing consultations and *pro se* support to people detained at Golden State Annex. *Id.* ¶ 5. Ms. Patel requested a copy of Mr. E.O.P.'s Certified Administrative Record (CAR) in order to review his immigration case and advise him on his options. *Id.* ¶ 19. Based on Ms. Patel's review, she determined that Mr. E.O.P. was likely eligible to file a motion to reopen with the BIA, based on his prior counsel's ineffective assistance. *Id.* After advising Mr. E.O.P. of his eligibility and the necessary forms and evidence to submit, Ms. Patel and undersigned counsel's organization attempted to local *pro bono* counsel for Mr. E.O.P. but was unable to place his case due to the limited supply of *pro bono* attorneys available to represent individuals in Mr. E.O.P.'s case posture. *Id.* Ms. Patel subsequently learned the BIA had received a motion to reopen from Mr. E.O.P., as well as a request for stay of removal, on October 13, 2023, rendering it timely filed. *Id.* ¶ 20.

77. On January 25, 2024, the BIA denied Mr. E.O.P.'s motion and accompanying stay request. *Id.* ¶ 21; *see also* Exh. C.

78. On February 23, 2024, the Ninth Circuit granted Mr. E.O.P.'s motion for appointment of *pro bono* counsel. Patel Decl. ¶ 22. Also on February 23, 2024, Mr. E.O.P. filed *pro se* with the Ninth Circuit a petition for review of the BIA's denial of his motion to reopen. *Id.* 23. Ms. Patel provided advice and assistance via telephone to Mr. E.O.P. in preparing and filing this petition for review. *Id.* As required under 8 U.S.C. § 1252(b)(6), the Ninth Circuit consolidated this petition for review with that of his direct appeal. *Id.*; *see also* Exh. D.

79. On June 13, 2024, the Ninth Circuit appointed Patrick Burns as *pro bono* counsel for Mr. E.O.P. in both petitions for review and thereafter issued a briefing schedule. Patel Decl. ¶ 24; *see also* Attorney Declaration of Patrick Burns ("Burns Decl.") ¶ 4. Mr. Burns submitted the opening brief in support of both of Mr. E.O.P.'s petitions for review on October 30, 2024. *Id.* ¶ 7. Respondents submitted their answering brief on January 28, 2025. *Id.* On April 21, 2025, Mr.

Burns filed Mr. E.O.P.'s reply brief. *Id.*; *see also* Exh. D.

80. There is no deadline by which the Ninth Circuit must rule on Mr. E.O.P.'s petition for review. *Id.* ¶ 8; Patel Decl. ¶ 25. The FAQs on the Ninth Circuit's website indicate that after oral argument, there is no time limit by which the Court must make a decision, "but most cases are decided within [three] months to a year after submission."[14] Patel Decl. ¶ 26. This means Mr. E.O.P.'s already prolonged detention will continue for several months, at a minimum, and may last as long as another year before a decision on his petition for review is made. *Id.* Regardless of the outcome of Mr. E.O.P.'s petitions for review at the Ninth Circuit, he will likely be detained for at least several months more and up to over a year. *Id.* ¶ 27.

81. Thus, regardless of the Ninth Circuit's decision on the pending matter, there is no end to Mr. E.O.P.'s detention in sigh, absent relief from this Court. *Id.* ¶¶ 25-27.

LEGAL FRAMEWORK

82. The Due Process Clause of the U.S. Constitution protects noncitizens from arbitrary prolonged detention. *See* U.S. Const. amend. V; *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) ("[T]he Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence is lawful, unlawful, temporary, or permanent."). "'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 *Reno v. Flores*, 507 U.S. 292, 306 (1993)). "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*, 533 U.S. at 679; *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 applies to all noncitizens, including both removable and inadmissible noncitizens. *See id.* at 721 (Kennedy, J., dissenting) ("[B]oth removable and

[14] Ninth Circuit Court of Appeals, "Frequently Asked Questions" (last accessed June 11, 2025), https://www.ca9.uscourts.gov/general/faq/.

inadmissible [noncitizens] are entitled to be free from detention that is arbitrary or capricious.").

83. Due process requires "adequate procedural protections" to ensure that the government's asserted justification for physical confinement outweighs the individual's liberty interest in avoiding physical restraint. *Id.* at 690. The Supreme Court held that "brief" detention without a custody hearing under Section 1226(c) did not violate the Constitution, based on its misguided understanding that detention of noncitizens under Section 1226(c) lasts "an average . . . of 47 days" in the majority of cases and an average of five and a half months in cases that involve a BIA appeal. *Demore* 538 U.S. at 513, 529.[15]

84. When the detention of a noncitizen becomes prolonged or unreasonable, however, an individualized determination is required to determine whether such a significant deprivation of liberty is justified. *See Zadvydas*, 533 U.S. at 690 ("[a] statute permitting indefinite detention of [a noncitizen] would raise a serious constitutional problem."); *Demore*, 538 U.S. at 532 (Kennedy, J., concurring) ("since the Due Process Clause prohibits arbitrary deprivations of liberty, a lawful permanent resident alien such as respondent could be entitled to an individualized determination as to his risk of flight and dangerousness if the continued detention became unreasonable or unjustified."); *Jennings*, 138 S. Ct. at 839, 844 (leaving open the question of whether prolonged detention under Section 1226(c) without a bond hearing violates the Due Process Clause); *see also Lopez v. Garland*, 631 F.Supp.3d 870, 877 (E.D. Cal. 2022) (holding that "unreasonably prolonged mandatory detention under 8 U.S.C. § 1226(c) without an individualized bond hearing violates due process"). This is not a controversial proposition, and

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[15] After the Court in *Demore* issued its decision based on the government's estimate of detention length, ***the government admitted that it had submitted false estimates of detention duration*** that were much shorter than the reality; in fact, people who appealed immigration court decisions spent over a year in custody, on average. *See* Letter from Ian H. Gershengorn, Acting Solic. Gen., to Hon. Scott S. Harris, Clerk, Supreme Court (Aug. 26, 2016). The estimate is now much longer: "The data from the *Jennings* case show that 460 members of the respondent section 1226(c) subclass were detained for an average of 427 days (over fourteen months) with some individual detention periods exceeding four years. Indeed, when the GAO conducted a study, it found that as of 2015, the median length of time it takes the BIA to complete an appeal of a removal order exceeds 450 days." *See Lopez v. Garland*, 631 F.Supp.3d 870, 877 n.2 (E.D. Cal. 2022) (internal citations omitted).

since the Supreme Court's decision in *Jennings*, the government has conceded that prolonged immigration detention without review violates due process. *See, e.g.*, *Sajous v. Decker*, no. 18-cv-2447, 2018 WL 2357266, at *8 (S.D.N.Y. May 23, 2018).

85. This is consistent with longstanding due process principles requiring procedural safeguards in cases involving prolonged confinement. *See Jackson v. Indiana*, 406 U.S. 715, 733 (1972) (holding that detention beyond the "initial commitment" requires additional safeguards); *McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249-50 (1972) (holding that "lesser safeguards may be appropriate" for "short-term confinement"); *Hutto v. Finney*, 437 U.S. 678, 685-86 (1978) (holding that, under the more demanding Eighth Amendment standard, "the length of confinement cannot be ignored in deciding whether [a] confinement meets constitutional standards"); *Zadvydas*, 533 U.S. at 690 ("[a] statute permitting indefinite detention of [a noncitizen] would raise a serious constitutional problem."); *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018) ("We have 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."); *see also German Santos v. Warden Pike Cty. Corr. Facility*, 965 F.3d 203, 210 (3d Cir. 2020) ("[E]ven though the [*Jennings*] Court foreclosed reading the statutory text [of the detention statutes] as guaranteeing periodic bond hearings, it reserved the [noncitizens'] constitutional claims for remand. . . . We are thus bound by [our precedents] that § 1226(c) is unconstitutional when applied to detain a[] [noncitizen] unreasonably long without a bond hearing."); *Reid v. Donelan,* 17 F.4th 1, 7 (1st Cir. 2021) (holding that "the Due Process Clause imposes some form of reasonableness limitation upon the duration of detention" under section 1226(c)) (internal quotation marks omitted).[16]

[16] The Supreme Court's decision in *Jennings* did not alter the constitutional analysis. While *Jennings* rejected the application of the constitutional avoidance canon to Sections 1226(c) and 1225(b), the Court found that "the Court of Appeals . . . had no occasion to consider [the] constitutional arguments on their merits," and remanded the case for further development. *Id.* at 851. The Ninth Circuit in turn remanded the case to the district court, registering its "grave

86. Following these clear signals, courts within this District and Circuit have held that prolonged detention under Section 1226(c) without a bond hearing violations constitutional due process. *See, e.g.*, *Vi Kiet Diep v. Wofford*, No. 24-CV-01238-SKO (HC), 2025 WL 604744 (E.D. Cal. Feb. 25, 2025) (finding § 1226(c) detention of approximately 13 months without a bond hearing unconstitutionally prolonged and granting habeas); *Lopez*, 631 F.Supp.3d 870 (finding § 1226(c) detention of "approximately one year" without a bond hearing unconstitutionally prolonged and granting habeas, but noting various district courts that have found *shorter* lengths of detention pursuant to § 1226(c) without a bond hearing to be unreasonable); *Singh v. Garland*, No. 1:23-cv-01043-EPG-HC, 2023 WL 5836048 (E.D. Cal. Sept. 8, 2023) (detention of over two years without a bond hearing unconstitutionally prolonged and granting habeas); *Sho v. Current or Acting Field Office Dir.*, No. 21-cv-01812-TLN-AC, 2023 WL 4014649 (E.D. Cal. June 15, 2023) (finding § 1226(c) detention of over two years without a bond hearing unconstitutionally prolonged and granting habeas); *see also I.E.S. v. Becerra*, No. 23-cv-03783-BLF, 2023 WL 6317617 (N.D. Cal. Sept. 27, 2023) (finding § 1226(c) detention of over a year (16 months) without a bond hearing unconstitutionally prolonged and granting habeas); *Romero Romero v. Wolf*, No. 20-cv-08031-TSH, 2021 WL 254435 (N.D. Cal. Jan. 26, 2021) (finding § 1226(c) detention of over a year (13 months) without bond hearing unconstitutionally prolonged and granting habeas); *Sibomana v. LaRose*, No. 22-cv-833-LL-NLS, 2023 WL 3028093 (S.D. Cal. Apr. 20, 2023) (finding 8 U.S.C. § 1226(c) detention of over a year (19 months) without a bond hearing unconstitutionally prolonged and granting habeas); *Sanchez-Rivera v. Matuszewski*, No. 3:22-cv-01357-MMA-JLB, 2023 WL 139801 (S.D. Cal. Jan. 9, 2023) (finding 8 U.S.C. § 1226(c) detention of over a year

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doubts that any statute that allows for arbitrary prolonged detention without any process is constitutional." *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018); *see also German Santos v. Warden Pike Cty. Corr. Facility*, 965 F.3d 203, 210 (3d Cir. 2020) ("[E]ven though the [*Jennings*] Court foreclosed reading the statutory text [of the detention statutes] as guaranteeing periodic bond hearings, it reserved the [noncitizens'] constitutional claims for remand. . . . We are thus bound by [our precedents] that § 1226(c) is unconstitutional when applied to detain a[] [noncitizen] unreasonably long without a bond hearing.").

without a bond hearing unconstitutionally prolonged and granting habeas); *Martinez v. Clark*, No. C18-1669-RAJ-MAT, 2019 WL 5968089 (W.D. Wash. May 23, 2019) (finding § 1226(c) detention of 13 months without a bond hearing with potential to last at least six more months unreasonable and granting habeas).

A. Detention That Exceeds Six Months Without A Bond Hearing Is Unconstitutional.

87. Detention without a bond hearing is unconstitutional when it exceeds six months. *See Diouf v. Napolitano (Diouf II)*, 634 F.3d 1081, 1091-92 (9th Cir. 2011) (holding that immigration "detention becomes prolonged" after six months and "greater procedural safeguards are therefore required"); *Zadvydas,* 533 U.S. at 701 ("Congress previously doubted the constitutionality of detention for more than six months"); *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1207 (9th Cir. 2022) ("[O]nce the [noncitizen] has been detained for approximately six months, continuing detention becomes prolonged" (cleaned up) (quoting *Diouf II*, 634 F.3d at 1091)); *Rodriguez v. Nielsen*, No. 18-CV-04187-TSH, 2019 WL 7491555, at *6 (N.D. Cal. Jan. 7, 2019) ("[D]etention becomes prolonged after six months and entitles [Petitioner] to a bond hearing.").

88. The recognition that six months is a substantial period of confinement, after which additional process is required to support continued incarceration, is deeply rooted in our legal tradition. With few exceptions, "in the late 18th century in America crimes triable without a jury were for the most part punishable by no more than a six-month prison term." *Duncan v. Louisiana*, 391 U.S. 145, 161 n.34 (1968). Consistent with this tradition, the Supreme Court has found six months to be the limit of confinement for a criminal offense that a federal court may impose without the protection afforded by jury trial. *See, e.g.*, *United States v. Nachtigal*, 507 U.S. 1, 5 (1993) (characterizing as "severe" the "loss of liberty caused by imprisonment for more than six months"); *Blanton v. North Las Vegas, Nev.*, 489 U.S. 538, 542 (1989) (because "the loss of liberty" is so severe, it is "an 'intrinsically different' form of punishment" necessitating additional procedural safeguards after six months); *Taylor v. Hayes*, 418 U.S. 488, 495–96

(1974) (holding that states may not impose sentences exceeding six months without a jury trial).

89. The Supreme Court extended this six-month line to the civil context in a case setting out procedural requirements for civil commitment related to mental health. *McNeil*, 407 U.S. at 249, 250-52. In *McNeil*, the Court held that due process requires procedural safeguards for civil confinements that are not "strictly limited" in length, noting that the six-month limit for civil commitments without an individualized inquiry originally laid out by the relevant statute "provides a useful benchmark." *Id.*

90. The Ninth Circuit applied the six-month line to immigration detention, holding that when "detention crosses the six-month threshold and release or removal is not imminent," "a hearing before a neutral decision maker" is a "reasonable" procedural safeguard. *Diouf II*, 634 F.3d at 1092. Although *Diouf II* specifically addressed the legality of prolonged detention under 8 U.S.C. § 1231(a)(6), its reasoning applies equally, if not with more force, to immigration detention under 1226(c). *Id.* at 1087 (recognizing that although "[t]he government may be correct that at the margin, § 1231(a)(6) detainees have a lesser liberty interest in freedom from detention" than detainees under Section 1226(a), "[r]egardless of the stage of the proceedings, the same important interest is at stake—freedom from prolonged detention."). *See also Rodriguez Diaz*, 53 F.4th at 1207 ("We have also held, more generally, that an individual's private interest in 'freedom from prolonged detention' is 'unquestionably substantial.'" (quoting *Singh*, 638 F.3d at 1208)). Relying on the analysis in this line of precedent, a court in the Northern District applied the six-month line to immigration detention under § 1226(c), holding that, after six months of detention the Constitution requires an individualized inquiry into whether further physical custody is justified. *See Rodriguez v. Nielsen*, 2019 WL 7491555, at *6 ("In the absence of controlling appellate authority, this Court concludes the analytical framework . . . supports [petitioner's] argument that detention becomes prolonged after six months and entitles [a detainee] to a bond hearing. . . [those cases'] reasoning was constitutional in nature.").

B. Even Absent A Bright-Line Six-Month Standard, An Individualized Bond Hearing Is Required When Detention Becomes Unreasonably Prolonged.

91. Across district and circuit courts, where they have declined to apply a bright-line rule, the *Mathews v. Eldridge* balancing test—promulgated by the Supreme Court—is most consistently used as a metric for determining whether due process requires a bond hearing for individuals detained for unreasonable periods under § 1226(c). *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976); *see also Rodriguez Diaz v. Garland*, 53 F.4th at 1206 (noting courts' consistent use of the *Mathews* test, both in the Ninth Circuit and in other circuits, when considering due process challenges, and listing the various circumstances under which the Ninth Circuit has applied the *Mathews* test in immigration-related matters in particular). The government has even propounded its application in immigration habeas petitions regarding unreasonably prolonged detention under § 1226(c). *See Lopez*, 631 F.Supp.3d at 878–79 ("[Government] Respondents argue that the *Mathews* test applies . . . .").

92. The *Mathews* test balances (1) the private interest threatened by governmental action; (2) the risk of erroneous deprivation of such interest and the probable value of additional procedural safeguards; and (3) the government interest. *Mathews*, 424 U.S. at 335. Numerous courts applying the *Mathews* test have found that prolonged detention under § 1226(c) without an individualized hearing violates procedural due process. *See, e.g.*, *Vi Kiet Diep*, 2025 WL 604744, at *4 (applying the *Mathews* test to find petitioner detained under § 1226(c) for approximately 13 months entitled to a bond hearing); *Sho v. Current or Acting Field Office Dir.*, 2023 WL 4014649, at *4 (finding individual held under § 1226(c) for approximately two years entitled to bond hearing under the *Mathews v. Eldridge* balancing test); *Singh v. Garland*, 2023 WL 5836048, at *5–8 (finding petitioner detained under § 1226(c) for approximately two years entitled to a bond hearing under the *Mathews v. Eldridge* balancing test); *see also I.E.S. v. Becerra*, 2023 WL 6317617, at *8 (finding persuasive that "the Ninth Circuit and its sister circuits have applied the *Mathews* test in the immigration context" and applying the *Mathews* test to find petitioner detained for 16 months under § 1226(c) entitled to a bond hearing); *Jimenez v.*

Wolf, No. 19-cv-07996-NC, 2020 WL 510347, at *3 (N.D. Cal. Mar. 6, 2020) (applying the *Mathews* test where the noncitizen had been detained under § 1226(c) for over a year without a bond hearing); *Perera v. Jennings*, 598 F. Supp.3d 736, 742 (N.D. Cal. 2022) (*Perera II*) (applying the *Mathews* test where the noncitizen was at risk of being re-detained under § 1226(c)); *Jensen v. Garland*, No. 21-cv-01195-CAS (AFM), 2023 WL 3246522, at *4 (C.D. Cal. 2023) (applying the *Mathews* test where noncitizen was detained for a prolonged period of time under § 1226(c) and finding petitioner was entitled to a bond hearing); *Galdillo v. U.S. Dep't of Homeland Sec.*, EDCV 21-724 JGB (KKx), 2021 WL 4839502, at *3 (C.D. Cal. 2021) (same).

93. Alternatively, courts that apply a reasonableness test have considered a list of four non-exhaustive factors in determining whether prolonged detention is unreasonable. *German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 210-22 (3d Cir. 2020). The reasonableness inquiry is "highly fact-specific." *Id.* at 210. "The most important factor is the duration of detention." *Id.* at 211; *see also Gonzalez v. Bonnar*, No. 18-CV-05321-JSC, 2019 WL 330906, at *1, *5 (N.D. Cal. Jan. 25, 2019) (concluding that the petitioner's detention under § 1226(c) for just over one year without a custody hearing weighed strongly in favor of finding detention unreasonable and violated his due process rights, and granting habeas). Duration is evaluated along with "all the other circumstances," including (1) whether detention is likely to continue, (2) reasons for the delay, including whether delay was "unnecessary" due to either party's "careless or bad-faith" errors; and (3) whether the conditions of confinement are meaningfully different from criminal punishment. *German Santos*, 965 F.3d 203 at 211; *Lopez*, 631 F.Supp.3d at 879 (applying a modified version of the *German Santos* test, including "the total length of detention to date, the likely duration of future detention, and the delays in the removal proceedings caused by the petitioner and the government").

C. At Any Hearing, The Government Must Justify Ongoing Detention by Clear and Convincing Evidence.

94. Where a custody hearing is warranted as a procedural safeguard against prolonged detention, the government bears the burden of justifying continued confinement by

clear and convincing evidence. *Singh v. Holder*, 638 F.3d 1196, 1205 (9th Cir. 2011) (requiring the government to bear the burden of proof at prolonged immigration detention hearings by clear and convincing evidence as a matter of due process). "Because it is improper to ask the individual to share equally with society the risk of error when the possible injury to the individual—deprivation of liberty—is so significant, a clear and convincing evidence standard of proof provides the appropriate level of procedural protection." *Id.* at 1203-04; *see also Cooper v. Oklahoma*, 517 U.S. 348, 363 (1996) ("[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.'") (quoting *Santosky v. Kramer*, 455 U.S. 745, 756 (1982)); *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) (requiring clear and convincing evidence to justify civil commitment because "[f]reedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause.").

95. Following *Singh*, this District as well as others within the Ninth Circuit that have ordered individualized hearings to remedy prolonged detention under § 1226(c) have required the government to bear the burden of proving flight risk or danger by clear and convincing evidence. *See, e.g.*, *Vi Kiet Diep*, 2025 WL 604744, at *5 ("Respondent must justify Petitioner's continued detention by clear and convincing evidence."); *Sho*, 2023 WL 4014649, at *5 (applying *Singh* and holding that the government shall bear the burden of proof by clear and convincing evidence at a constitutionally required bond hearing in the § 1226(c) context); *Singh v. Garland*, 2023 WL 5836048, at *10–11 (same); *Lopez*, 631 F.Supp.3d at 882 n.9 (same); *see also J.P. v. Garland*, 685 F.Supp.3d 943, 949 (N.D. Cal. 2023) (same); *I.E.S. v. Becerra*, No. 23-CV-03783-BLF, 2023 WL 6317617, at *10 (N.D. Cal. Sept. 27, 2023) (same); *Hernandez Gomez v. Becerra*, No. 23-CV-01330-WHO, 2023 WL 2802230, at *4 (N.D. Cal. Apr. 4, 2023) (collecting cases that the government bears the burden of proof); *Pham v. Becerra*, No. 23-CV-01288-CRB, 2023 WL 2744397, at *7 (N.D. Cal. Mar. 31, 2023) ("Absent controlling authority to the contrary, the reasoning of *Singh* and its holding remains applicable to § 1226(c) cases, like this one, where there is a 'substantial liberty interest at stake'").

D. Due Process Requires Consideration Of Alternatives To Detention.

96. The basic purposes of immigration detention under 1226(c) are to effectuate expeditious removal and to safeguard the community. *See Demore*, 538 U.S. at 515; *Zadvydas*, 533 U.S. at 697. The Ninth Circuit has held that civil detention is not reasonably related to this purpose when "the challenged restrictions . . . are employed to achieve objectives that could be accomplished in so many alternative and less harsh methods." *Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004) (quoting *Jackson*, 406 U.S. at 738) (internal quotation marks omitted); *see also Bell v. Wolfish*, 441 U.S. 520, 538–39 (1979) (civil pretrial detention may be unconstitutionally punitive if it is excessive in relation to its legitimate purpose). Thus, where the government's objectives could be accomplished through "alternative and less harsh" conditions of release, due process requires they be considered. *Jones*, 393 F.3d at 932.

97. For instance, 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 v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017) (observing that ISAP "resulted in a 99% attendance rate at all EOIR hearings and a 95% attendance rate at final hearings"). Thus, alternatives to detention, like ISAP, must be considered in determining whether prolonged incarceration is warranted, and the government should bear the burden at an individualized custody determination to show that "no condition or combination of conditions short of detention could reasonably assure [Petitioner's] appearance at removal proceedings or the safety of the community." *Doe v. Becerra*, No. 23-cv-05327-RMI, 2024 WL 1018519, at *7 (N.D. Cal. Mar. 7, 2024).

98. Due process likewise requires consideration of a noncitizen's ability to pay a bond. "Detention 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)). Therefore, when determining the appropriate conditions of release for detained noncitizens, due process requires "consideration of financial circumstances and

alternative conditions of release." *Id.*; *see also Martinez v. Clark*, 36 F.4th 1219, 1231 (9th Cir. 2022) ("While the government had a legitimate interest in protecting the public and ensuring the appearance of noncitizens in immigration proceedings, we held [in *Hernandez*] that detaining an indigent [noncitizen] without consideration of financial circumstances and alternative release conditions was 'unlikely to result' in a bond determination 'reasonably related to the government's legitimate interests.' (citation omitted)."); *Doe v. Becerra*, 2024 WL 1018519, at *7 ("If the government fails to meet [its] burden, the immigration judge shall order Petitioner released on appropriate conditions of supervision, taking into account his ability to pay a bond and any available alternatives to the payment of a monetary bond.").

ARGUMENT

A. Mr. E.O.P. is Entitled to a Custody Hearing Because His Detention Has Exceeded Six Months

99. As discussed at Paragraphs 87–90, *supra*, civil immigration detention without an individualized custody redetermination becomes prolonged at six months. Under this bright-line standard, Mr. E.O.P.—who has been detained for over two-and-a-half years—is entitled to a prompt, individualized inquiry into the justification for his detention by a neutral adjudicator. *See Diouf II*, 634 F.3d at 1092 n.13 (holding that detention is prolonged and thereby requires heightened procedural safeguards "when it has lasted six months and is expected to continue" beyond six months). Respondents have already detained Mr. E.O.P. for nearly 33 months without providing him with a custody redetermination hearing. They will continue to detain him for many more months, if not years, as his Ninth Circuit case is pending. *See* Patel Decl. ¶¶ 25-27. Thus, due process requires this Court to order a bond hearing for Mr. E.O.P.

B. Mr. E.O.P. is Entitled to a Custody Hearing Because His Detention is Unreasonably Prolonged

100. Mr. E.O.P.'s detention since September 22, 2022, without any individualized review by a neutral adjudicator is unreasonable under the *Mathews v. Eldridge* test. Mr. E.O.P. is thus entitled to a custody hearing before a neutral adjudicator.

i. Each of the *Mathews v. Eldridge* factors weighs in Mr. E.O.P.'s favor, entitling him to an individualized determination.

101. Here, where Mr. E.O.P. has *never* received any individualized evaluation of his detention, the *Mathews* factors—(1) the private interest involved; (2) the risk of erroneous deprivation and the probable value of additional safeguards; and (3) the government interest—clearly weigh in his favor and require that this Court promptly hold a hearing to evaluate whether Respondents can justify his ongoing detention.

102. Regarding the first *Mathews* factor, Mr. E.O.P. indisputably has a weighty interest in his liberty—the core private interest at stake here. *Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due Process Clause] protects."). Mr. E.O.P. "has an overwhelming interest here—regardless of the length of his immigration detention—because 'any length of detention implicates the same' fundamental rights." *Perera v. Jennings*, No. 21-cv-04136-BLF, 2021 WL 2400981, at *4 (N.D. Cal. June 11, 2021) (*Perera I*).

103. Mr. E.O.P.'s private interest is particularly strong because of the length of his detention. ICE has already imprisoned Mr. E.O.P. for more than two-and-a-half-years, and neither release nor removal are remotely in sight, as Mr. E.O.P.'s case is still being litigated before the Ninth Circuit. *See* Patel Decl. ¶¶ 25-27 ; *see also Zadvydas*, 533 U.S. at 690, 691 (holding that the strength of liberty interest increases as period of confinement grows); *Diouf II*, 634 F.3d at 1091-92 ("When detention crosses the six-month threshold and release or removal is not imminent, the private interests at stake are profound."). Indeed, Mr. E.O.P.'s time in civil detention is now *more than twenty-two times* the length of the "brief" six-week detention contemplated by the Court in *Demore*. *See* Patel Decl. ¶ 3; *Demore*, 538 U.S. at 530 (citing an average detention length of one and a half months for cases that do not involve an appeal). Moreover, Mr. E.O.P.'s confinement is likely to continue for many more months, if not years. *See* Patel Decl. ¶¶ 25-27.

104. Mr. E.O.P.'s private interest is further strengthened by the punitive conditions of

his civil confinement at Golden State Annex, which, as detailed above, are equally or more restrictive of his liberty than those he experienced during his time serving a criminal sentence in a penal institution. *See* ¶¶ 25-27, 55-60, *supra*; E.O.P. Decl. ¶¶ 104, 109-12; Patel Decl. ¶¶ 31-45; *see also Gonzalez v. Bonnar*, No. 18-CV-05321-JSC, 2019 WL 330906, at *5 (N.D. Cal. Jan. 25, 2019) (holding that "courts consider the conditions of the [noncitizen's detention because noncitizens] held under § 1226(c) are subject to civil detention rather than criminal incarceration."); *Martinez v. Clark*, 2019 WL 5968089, at *9 (holding that the more that "conditions under which the [noncitizen] is being held resemble penal confinement, the stronger his argument that he is entitled to a bond hearing."). At Golden State Annex, in *civil* detention, Mr. E.O.P. is being held in a locked-down facility, with heavily restricted freedom of movement and impeded access to his family, counsel, and support network. Efforts to advocate for conditions to be brought in compliance with ICE's PBNDS governing its detention facilities are met with retaliatory violence, withholding of medical care, and threats of transfer or other related consequences. *See* E.O.P. Decl. ¶ 108; Patel Decl. ¶ 32-39.

105. Finally, Mr. E.O.P.'s liberty interest is particularly profound because of the depth of his ties to the United States and the impacts of his lengthy detention, which must be afforded weight under the *Mathews* test. Mr. E.O.P. has lived in the United States since he was approximately five years old; *all of his ties* are in and to the United States, including his U.S. citizen mother, his three U.S. citizen sisters, his U.S. citizen nieces and nephews, his U.S. citizen fiancée, and a large extended family. *See* E.O.P. Decl. ¶¶ 1, 3, 122, 129-31. His extensive ties to the United States heighten his interest in being at liberty, in the company of his family and community, while his immigration proceedings continue.

106. The second prong of the *Mathews* balancing test requires that the Court assess the erroneous risk of deprivation under the procedural protections available and the probable value of additional or substitute procedural safeguards. *See Mathews*, 424 U.S. at 335. This prong also weighs heavily in Mr. E.O.P.'s favor. In this case, the risk of erroneous deprivation of his liberty is high, as he has been detained since September 2022 without any evaluation of whether the

government can justify detention under their individualized circumstances. "[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. Further, "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." *Jimenez v. Wolf*, No. 19-cv-07996-NC, 2020 WL 510347, *3 (N.D. Cal. Jan. 30, 2020) (granting habeas petition for person who had been detained for one year without a bond hearing).

107. The third *Mathews* prong also supports Mr. E.O.P.'s petition: the government's interest in continuing to detain him without any neutral review of whether detention is justified is very weak. *See Mathews*, 424 U.S. at 335. At this stage in the analysis, the specific interest at stake here is *not* the government's ability to continue to detain Mr. E.O.P. at all, but rather the government's interest in continuing to detain him for years on end *without any individualized review*. *See Vi Kiet Diep*, 2025 WL 604744, at *5; *Sho*, 2023 WL 4014649, at *4; *Singh v. Garland*, 2023 WL 5836048, at *6; *Lopez Reyes v. Bonnar*, 362 F. Supp. 3d 762, 777 (N.D. Cal. 2019); *Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 964 (N.D. Cal. 2019). The cost of providing an individualized inquiry is minimal. *See Henriquez v. Garland*, No. 22-CV-00869-EJD, 2022 WL 2132919, at *5 (N.D. Cal. June 14, 2022); *Singh v. Garland*, 2023 wl 5836048, at *6 ("Courts generally have found that the cost of providing a bond hearing is relatively minimal . . . ."). The government has repeatedly conceded this fact. *See Lopez Reyes*, 362 F. Supp. 3d at 777; *Marroquin Ambriz*, 420 F. Supp. 3d at 964; *see also De Paz Sales*, No. 19-cv-04148-KAW, 2019 WL 4751894, at *7 (N.D. Cal. Sept. 30, 2019) ("[T]he Government does not argue there are any costs to providing a bond hearing."); *Singh v. Barr*, 400 F. Supp. 3d 1005, 1021 (S.D. Cal. 2019) ("The government has not offered any indication that a second bond hearing would have outsize effects on its coffers."). 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) (quoting *Sammartano v. First Judicial Dist. Court*, 303 F.3d 959, 974 (9th Cir. 2002)); *cf. Doe 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.").

108. In sum and on balance, the *Mathews* factors establish that, at a minimum, Mr. E.O.P. is entitled to a bond hearing before a neutral adjudicator. Mr. E.O.P.'s incredibly strong interest in being free from unlawful detention combined with the extremely high risk of erroneous deprivation without a hearing before a neutral decision maker clearly outweighs the government's interest in continuing his detention without providing him a bond hearing. Indeed, the State of California already deemed Mr. E.O.P. fit for release from its custody and into the community nearly 33 months ago, yet he has now endured two years and nine months of custody *without any procedural safeguards* to ensure the government's reasons for restraining his liberty are justified.

109. Unsurprisingly, applying these standards, courts in this district and Circuit have repeatedly held that prolonged detention without an individualized hearing violates procedural due process for individuals who were held under the same detention statute, and for similar and *shorter* lengths of time. *See, e.g.*, *Vi Kiet Diep*, 2025 WL 604744, at *5 (holding that the petitioner's detention under § 1226(c) for just over a year without a custody hearing "violate[d] his Fifth Amendment due process rights" and granting habeas); *Sho*, 2023 WL 4014649, at *5 (holding that "[d]ue process . . . requires a hearing in the immigration court" where petitioner was detained under § 1226(c) for approximately 28 months); *Singh v. Garland*, 2023 WL 5836048 (same); *see also I.E.S. v. Becerra*, 2023 WL 6317617 (holding that petitioner's detention under § 1226(c) of over a year (16 months) without a bond hearing was unconstitutionally prolonged and granting habeas); *Romero Romero*, 2021 WL 254435 (same, at 13 months of detention); *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, *5 (holding that the Mr. Petitioner's detention under § 1226(c) for just over one year without a custody hearing violates his due process rights and granting habeas); *Sibomana*, 2023 WL 3028093 (same, at 19 months

of detention); *Martinez v. Clark*, 2019 WL 5968089 (same, at 13 months of detention). This Court should so hold as well.

110. *Rodriguez Diaz* does not disturb this result, as the case does not apply to individuals detained pursuant to § 1226(c). *Rodriguez Diaz*, 53 F.4th at 1195. In *Rodriguez Diaz*, the Ninth Circuit applied the *Mathews* test to hold that the detention of a noncitizen detained under a different detention statute—8 U.S.C. § 1226(a)—did not violate procedural due process. *Id.* Unlike § 1226(c), § 1226(a) and its implementing regulations mandate that individuals detained under its authority receive an individualized bond hearing at the outset of detention and provides for further bond hearings upon a material change in circumstances. *See* 8 C.F.R. § 1236.1; 1003.19(e). The panel's decision in *Rodriguez Diaz* was predicated on the immediate and ongoing availability of this administrative process under § 1226(a). *See* 53 F.4th at 1202 ("Section 1226(a) and its implementing regulations provide extensive procedural protections that are unavailable under other detention provisions, including several layers of review of the agency's initial custody determination, an initial bond hearing before a neutral decisionmaker, the opportunity to be represented by counsel and to present evidence, the right to appeal, and the right to seek a new hearing when circumstances materially change."); *see also id.* at 1207, 1209 (initial bond hearing and availability of changed circumstances bond hearing reduced petitioner's private interest and mitigated risk of erroneous deprivation).

111. Since *Rodriguez Diaz*, courts in this Circuit have found that the analysis in *Rodriguez Diaz* does not preclude the claim that procedural due process requires a bond hearing for those detained under § 1226(c). *See Vi Kiet Diep*, 2025 WL 604744, at *4 ("Here, unlike the petitioner in *Rodriguez Diaz*, Petitioner has not received the benefit of a bond hearing."); *Hogarth v. Giles*, No. 5:22-cv-01809-DSF-MAR, Dkt. No. 20 (C.D. Cal. Jan. 11, 2023)), report and recommendation adopted in relevant part Dkt. No. 24 (C.D. Cal. Feb. 23, 2023) ("[T]he analysis for [this] *Mathews* factor here differs greatly from that of the Ninth Circuit in *Rodriguez Diaz*, primarily due to the fact that Section 1226(c) provides no opportunity for any further bond determinations for the duration of Petitioner's detention. . . . It cannot be that due process

authorizes infinite detention without any opportunity for reconsideration."); *see also J.P. v. Garland*, 685 F.Supp.3d at 949 (granting petition and ordering individualized hearing for petitioner subject to prolonged detention under § 1226(c) after *Rodriguez Diaz*); *Pham*, 2023 WL 2744397 (same).

112. Unlike the Petitioner in *Rodriguez Diaz*, Mr. E.O.P. has no statutory or regulatory process for an individualized review of his detention. *Rodriguez Diaz* thus does not disturb the many cases in this district holding that those in Mr. Doe's circumstances, detained under § 1226(c), are entitled to an individualized hearing.

113. This court should follow this district and circuit courts in holding that detention without an individualized hearing violates procedural due process for individuals like Mr. E.O.P., who has been detained under § 1226(c) for nearly 33months. In keeping with these cases, this Court should also hold the government's burden at an individualized hearing to rise to the level of a showing by clear and convincing evidence, which comports with Mr. E.O.P.'s heightened liberty interest in this case.

ii. Mr. E.O.P. is also entitled to a custody hearing under the factors discussed in *German Santos*.

114. To the extent the Court considers the factors discussed by the Third Circuit in *German Santos*, those factors favor Mr. E.O.P. and leave little doubt that his indefinite detention is unconstitutionally prolonged. Under the factors laid out by *German Santos*, Mr. E.O.P. is entitled to an individualized custody evaluation.

115. The first and most important factor is the length of duration of detention. *German Santos*, 965 F.3d at 211. Mr. E.O.P. has been detained for a substantial length of time: over 32 months. Courts have found much shorter lengths of detention pursuant to § 1226(c) without a bond hearing to be unreasonable. *See* ¶ 86, *supra*; *see also Lopez*, 631 F.Supp.3d at 879 (presenting cases with lengths of § 1226(c) detention shorter than one year without a bond hearing that were found to be unreasonable). The total length of detention weighs in favor of the provision of an individualized custody evaluation for Mr. E.O.P.

116. Second, Mr. E.O.P.'s detention is likely to continue months—potentially even years—as he asserts his right to seek immigration relief. *See* Patel Decl. ¶¶ 25-27. Mr. E.O.P.'s judicial review by the Ninth Circuit will be "sufficiently lengthy," weighing in his favor. *Lopez*, 631 F.Supp.3d at 880 (citing *German Santos,* 965 F.3d at 212). This factor strongly weighs in favor of Mr. E.O.P.

117. Third, the blame for Mr. E.O.P.'s prolonged detention cannot be laid at his feet as he has diligently sought relief from deportation to Honduras, a country where he fears persecution and torture. *See* Patel Decl. ¶¶ 5, 18-20, 23; Burns Dec. ¶¶ 4-6; *see also German Santos*, 965 F.3d at 211 ("[W]e do not hold a[] [noncitizen's] good-faith challenge to his removal proceedings against him, even if his appeals or applications for relief have drawn out the proceedings."); *Ly v. Hansen*, 351 F.3d 263, 272 (6th Cir. 2003) ("A[noncitizen] who would not normally be subject to indefinite detention cannot be so detained merely because he seeks to explore avenues of relief that the law makes available to him."). Noncitizens should not be punished for pursuing "legitimate proceedings" and legal rights to seek relief and remain in the United States, where he has lived since he was just five years old. *See Masood v. Barr*, No. 19-CV-07623-JD, 2020 WL 95633, at *3 (N.D. Cal. Jan. 8, 2020) ("[I]t ill suits the United States to suggest that [petitioner] could shorten his detention by giving up these rights and abandoning his asylum application."); *Grewal v. Becerra*, No. 23-cv-03621-JCS, 2023 WL 6519272, at *7 (N.D. Cal. Oct. 4, 2023) ("The '[litigation] choices' Respondents cite are nothing less than asserting Petitioner's legal rights with respect to remaining in the United States," including requests for continuances and filing of appeals.). Courts should not count a continuance or filing of an appeal against the noncitizen when they filed a request and obtained it in good faith, to prepare their removal case, and including efforts to obtain counsel. *See Hernandez Gomez*, 2023 WL 2802230, at *4 ("The duration and frequency of these requests [for continuances] do not diminish his significant liberty interest in his release or his irreparable injury of continued detention without a bond hearing."). This factor supports a finding in favor of Mr. E.O.P.

118. Finally, as detailed above, Mr. E.O.P.'s conditions of civil confinement and experience in a private, for-profit facility run by GEO Group are tantamount to—or worse than—conditions of criminal punishment. *See* E.O.P. Decl. ¶¶ 51–55, *supra*. In Golden State Annex, Mr. E.O.P. is locked inside a crowded dorm for a minimum of 21 hours a day with minimal access to outdoor recreation time, programming, and privacy. *See* Patel Decl. ¶¶ 40-44. The facility's repeated failures to comply with ICE's own standards for its detention centers serve as evidence of the DHS's failure to meet its constitutional obligation to protect those in its detention facilities by falling short of meeting the basic human needs of detained populations in its civil custody. *See DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 190 (1989) (citing *Estelle v. Gamble*, 429 U.S. 97 (1976); *Youngberg v. Romeo*, 457 U.S. 307 (1982) ("[. . . T]he affirmative duty to protect arises not from the State's knowledge of the individual's predicament or from its expressions of intent to help him, but from the limitations which it has imposed on his freedom to act on his own behalf, through imprisonment, institutionalization, or other similar restraint of personal liberty."). The dearth of action by ICE to ameliorate deteriorating conditions of confinement and an increase in the detained population at Golden State Annex indicate that the conditions are unlikely to improve. *See* Patel Decl. ¶ 45. Without an individualized custody determination, Mr. E.O.P. is likely to continue to languish in conditions that are not only violative of ICE's own standards but their affirmative constitutional duties to those in its custody. See *DeShaney*, 489 U.S. at 189. This factor swings decisively in Mr. E.O.P.'s favor. Here, given that Mr. E.O.P. has been detained since September 22, 2022, in conditions equal to, or worse than, penal confinement, procedural due process requires an individualized hearing.

CLAIM FOR RELIEF

Violation of the Due Process Clause of the Fifth Amendment to the United States Constitution

119. Mr. E.O.P. re-alleges and incorporates by reference the paragraphs above.

120. 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.

121. Mr. E.O.P.'s detention has become prolonged as he has been detained for over two-and-a-half years and faces at least additional months, and possibly years, of continued detention while his immigration case moves forward.

122. Mr. E.O.P.'s ongoing prolonged detention without an individualized hearing at which the government has established clear and convincing evidence of current flight risk or danger violates the Due Process Clause.

PRAYER FOR RELIEF

WHEREFORE, Mr. E.O.P. respectfully requests that this Court:

1) Assume jurisdiction over this matter;

2) Issue an order to show cause to the Respondents, requiring that Respondents file a return within three days;

3) Declare that Mr. E.O.P.'s ongoing detention violates the Due Process Clause of the Fifth Amendment;

4) Order Respondents to immediately release Mr. E.O.P., under any appropriate conditions;

5) Alternatively, order Mr. E.O.P. be released within 21 days unless, within that 21-day period, Respondents schedule a hearing before an immigration judge where: (1) to continue detention, the government must establish by clear and convincing evidence that Mr. E.O.P. presents a current risk of flight or danger such that no condition or combination of conditions short of detention could reasonably assure Mr. E.O.P.'s appearance at court; and (2) if (a) the government fails to meet its burden, the immigration judge orders Mr. E.O.P. released on appropriate conditions of supervision, taking into account Mr. E.O.P.'s ability to pay a bond and available alternatives to monetary bond, or (b) the government meets this burden, the immigration judge issues a reasoned decision explaining why the government has met its burden of proof and why no condition or combination of

conditions short of detention could reasonably assure Mr. E.O.P.'s appearance at court;

6) Enjoin Respondents from causing Petitioner any greater harm during the pendency of this litigation and his immigration proceedings, such as by transferring him farther away from his legal Counsel or placing him into solitary confinement;

7) Award reasonable costs, attorneys' fees, and other disbursements permitted under the Equal Access to Justice Act ("EAJA"), as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and

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

Dated: June 12, 2025

Respectfully submitted.

s/Mariel Villarreal
Mariel Villarreal
Pro bono Attorney for Petitioner
California Collaborative for Immigrant Justice

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

I am submitting this verification on behalf of Mr. E.O.P. because I am one of Mr. E.O.P.'s attorneys. As Mr. E.O.P.'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: June 12, 2025

/s/ Mariel Villarreal
Mariel Villarreal, Esq.
Pro Bono Attorney for Petitioner