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UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF CALIFORNIA

JOHN DOE,

Petitioner,

vs.

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

Respondents.

Case No.: _____

PETITION FOR WRIT OF HABEAS CORPUS

IMMIGRATION HABEAS CASE

INTRODUCTION

1. Petitioner John Doe ("Mr. Doe" or "Petitioner")[1] brings this petition for writ of habeas corpus to remedy his unjustifiably prolonged civil detention by immigration authorities. His lengthy detention under carceral conditions violates his right to substantive due process and requires this Court's intervention.

2. Mr. Doe has been detained by Immigration and Customs Enforcement ("ICE") for over two years and eight months (32 months) during the pendency of his challenge to his removal to [redacted]. He is likely to spend many more months in civil detention, as his immigration case is pending on appeal before the agency and any further appeal would likely take several additional months to resolve.

3. Mr. Doe's conditions of confinement at Golden State Annex resemble criminal punishment. Mr. Doe is currently held in a highly restrictive setting, in which he is only permitted three hours in the yard and has very limited access to programming. By contrast, Mr. Doe was previously incarcerated for over two decades by the state of California in prison, where he was permitted to spend most of the daytime outside the dorm, and had greater access to educational and work programs.

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

4. Mr. Doe's indeterminate detention is also unnecessary. Government objectives to safeguard the community and prevent flight can be met through less extreme means than absolute deprivation of liberty. While an immigration judge had previously determined that Mr. Doe should not be released, that decision took place over a year ago and recent evidence supports Mr. Doe's request for release on appropriate conditions. Indeed, a forensic psychologist recently confirmed that Mr. Doe poses essentially no risk of re-offense, and that his strong support network and prosocial behavior bode well for his positive adjustment. Mr. Doe has resided in the United States for over 40 years, and his many family members are waiting with open arms to reunite with their father, brother, nephew and cousin.

5. The length and nature of Mr. Doe's detention exceed the bounds of what due process can tolerate for someone who has spent years showing that he is an asset to the community and poses no *current* danger to the community. The Court should so rule and order his release.

CUSTODY

6. Mr. Doe is currently detained by ICE at Golden State Annex, in McFarland, California. He has been detained in civil immigration custody since October 11, 2022.

JURISDICTION

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

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

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

REQUIREMENTS OF 28 U.S.C. § 2243

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

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

400 (1963) (emphasis added).

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

VENUE

13. Venue for the instant habeas corpus petition properly lies in this District because it is the district with territorial jurisdiction over Respondent Tonya Andrews, the Facility Administrator and *de facto* warden of the ICE contract facility at which Mr. Doe is currently detained. *See Doe v. Garland*, 109 F.4th 1188 (9th Cir. 2024).

PARTIES

14. Petitioner, JOHN DOE, was born in El Salvador and has lived in the United States for over 45 years. Mr. Doe has been detained by ICE for over 32 months awaiting the conclusion of his removal proceedings. He fears removal to El Salvador and is seeking protection under the Convention Against Torture. Mr. Doe's appeal of the Immigration Judge's decision denying his CAT application is pending before the Board of Immigration Appeals. Without this Court's intervention, Mr. Doe will remain detained for the duration of his immigration case, including any period of judicial review, which is expected to continue for months, if not over a year.

15. Respondent TONYA ANDREWS is the facility administrator of Golden State Annex, a detention center located in McFarland, California run by GEO Group Inc., a private, for-profit company. Pursuant to the Ninth Circuit's recent decision in *Doe v. Garland*, 109 F.4th 1188,

1197 (9th Cir. 2024), Tonya Andrews is the proper respondent because she is the *de facto* warden of the facility at which Mr. Doe is detained. The mandate has yet to issue in that case, however, so the other respondents are named herein to ensure effective relief and continued jurisdiction in this case.

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

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

18. Respondent, KRISTI NOEM ("Secretary Noem"), is the Secretary of the Department of Homeland Security. She has authority over the detention and departure of noncitizens, like Petitioner, because she administers and enforces immigration laws pursuant to section 402 of the Homeland Security Act of 2002. 107 Pub L. 296 (November 25, 2003). Given this authority, Secretary Noem is the legal custodian over Mr. Doe and is empowered to carry out any administrative order issued against him.

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

BACKGROUND

A. Mr. Doe's Background

[redacted]

[2] All exhibits mentioned in this habeas petition are attached to the Declaration of Kelsey Morales.

23. In 1987, when Mr. Doe was 18 years old, he was convicted of burglary and sentenced to 60 days in jail. Doe Decl. at ¶ 7. [redacted]

24. For the next ten years, Mr. Doe focused on family. His daughter was born on 1987; and his son was born four years later. *Id.* at ¶¶ 8-9. After leaving high school, he worked at an appliance store for ten years. *Id.* at ¶ 9. ("Working kept me out of trouble ... My life was going well."). He and his wife sought to buy a home. *Id.* at ¶ 13. He obtained his lawful permanent residency in the 1990s. *Id.* at ¶ 10.

25. In 1997, Mr. Doe was convicted of two counts of attempted murder and two counts of assault with a firearm. *Id.* at ¶ 11; Exh. H, Government's Bond Submission, Tab E. After an argument outside a soccer game, he shot at two men, hitting one of them. Doe Decl. at ¶ 11; *see also* Exh. C, Phycological Evaluation by Dr. Williams. Mr. Doe was sentenced to 24 years and eight months in prison. Doe Decl. at ¶ 15. Mr. Doe's deep regret for his actions has colored his "every day since." *Id.* at ¶¶ 11, 13-14.

26. In 2017, Mr. Doe was convicted for an assault committed while in prison. *Id.* at ¶ 29. He was sentenced to a total of 8 years in prison. *See* Exh. H, Tab C, Felony Abstract of Judgement. [redacted]

[redacted]

27. While incarcerated, Mr. Doe obtained his G.E.D. Exh. A, Updated Doe Declaration (hereinafter "Updated Doe Decl.") at ¶ 5. He also worked in various positions, including in kitchens and machine shops, while incarcerated. *Id.* These programs allowed Mr. Doe to stay connected to his family and to himself. Doe Decl. at ¶ 33 ("Being employed gave me structure and made me feel good about myself."); Exh. G, Letter of Support from Petitioner's Son, Tab N, at 109 ("[My dad] had learned to sew and how to fix the different sewing machines. We connected with that as I ... ended up going to school to become a Fashion Designer."). In immigration custody, Mr. Doe continues his personal and professional development by taking tablet courses, since there are fewer programs available than in prison. Exh. A at ¶ 6. He had meetings with Manuel Ortiz, LCSW, stating in March 2024. Exh. B at 1. Mr. Doe is also an artist and has explored media from sculpture to drawing while detained. *Id.* at 9; *see also* Exh. F, Character Letters. If he is released from immigration custody, Mr. Doe hopes to obtain employment, and he has been in touch with organizations that can assist him with job training. Updated Doe Decl. at ¶ 18. *See also* Exh. G, Tab O, Letters Regarding Employment Opportunities. He also has other adult family members, including siblings, who reside in the United States and wish to support him upon release. *See* Exh. G, Tab N, Letters of support from family, friends, and community members.

B. Relevant Immigration Proceedings

28. On October 11, 2022, Mr. Doe was taken into DHS custody upon his release from state prison and transferred to Golden State Annex. *See* Exh. L, Habeas Decision. At the time of his

detention, Mr. Doe had pending removal proceedings that had been initiated while he was serving his state sentence and administratively closed in 2004. *See* Morales Decl." at ¶ 15.

29. On or about October 11, 2022, DHS filed a Motion to Re-Calendar and Change of Venue to the Van Nuys Immigration Court to restart removal proceedings. *Id.* at ¶ 16; *see also* Exh. H at 4. On or about October 25, 2022, an Immigration Judge ("IJ") granted the motions, Mr. Doe's proceedings were placed back on the court's active docket, and venue was changed to the Van Nuys Immigration Court. Morales Decl. at ¶ 16.

30. On or about January 20, 2023, the IJ denied Mr. Doe's *pro se* application for asylum, withholding of removal, and deferral of removal under the Convention Against Torture ("CAT") and ordered Mr. Doe removed to El Salvador. *See* Exh. H, Tab K, IJ's Decision.

31. On or about January 30, 2023, Petitioner filed a motion to reopen removal proceedings which was denied by the IJ on January 31, 2023. Morales Decl. at ¶ 22.

32. On or about February 27, 2023, Mr. Doe filed an appeal with the Board of Immigration Appeals ("BIA"). *Id.* at ¶ 23. On or about July 20, 2023, the BIA dismissed Mr. Doe's appeal. *Id.* *See also* Exh. H, Tab J, BIA's Decision.

33. On or about August 4, 2023, in the Ninth Circuit, Mr. Doe filed a Petition for Review and Motion to Stay Removal, which automatically stayed his removal pending further order of that court in accordance with the Ninth Circuit's General Order 6.4(c). *See* Exh. O, Ninth Circuit Docket. The Ninth Circuit granted Mr. Doe's Motion for a Stay of Removal and a Motion for Appointment of Counsel. *Id.* With the assistance of counsel, Mr. Doe filed a motion to reopen his case based on change circumstances in El Salvador on July 10, 2024. Exh. N, Declaration of Kari Hong (hereinafter "Hong Decl.") at ¶ 6.

34. On October 16, 2024, the BIA granted his motion to reopen his case and remanded his case to the Immigration Court. Exh. P, Decision of the BIA. [redacted]

[redacted]

Id. at 2-3. In light of the Board's reopening, Mr. Doe moved to dismiss his Ninth Circuit appeal, based on reopened proceedings before the agency. Exh. O. This Ninth Circuit case was dismissed on November 4, 2024. *Id.*

35. On remand before the Immigration Court, Mr. Doe presented evidence from two experts [redacted]. *Id.* The IJ once again denied Mr. Doe's application for deferral of removal to El Salvador under the CAT on April 1, 2025. *See* Exh. Q, IJ Decision

36. Mr. Doe filed an appeal with the BIA on April 1, 2025, and filed his appeal brief on May 29, 2025. Hong Decl. at ¶ 11. His appeal remains pending.

37. Mr. Doe's immigration counsel estimates that the BIA takes approximately four to six months to adjudicate an appeal where the noncitizen is detained. Hong Decl. at ¶ 13. After the

BIA issues a decision, Mr. Doe's detention may last for many more months, as it will either be remanded to the Immigration court for further factfinding or—if the BIA affirms the IJ's decision—reviewed by the Ninth Circuit. *Id.* According to the Ninth Circuit's website, for a civil appeal (which includes immigration matters) oral argument would be expected within "approximately 6 – 12 months from the notice of appeal date, or approximately 4 months from completion of briefing," and while there is no time limit for how long it might take from the time of argument to the time of decision, "most cases are decided within 3 months to a year after submission."[3]

C. Relevant Custody Proceedings

38. As Mr. Doe is detained under 8 U.S.C. 1226(c), he is statutorily ineligible for a bond hearing, irrespective of the prolonged nature or necessity of his detention.

39. On July 19, 2023, Mr. Doe filed a *pro se* habeas petition with the U.S. District Court for the Northern District of California, arguing that his continued detention violated both his due process rights and his rights under the Eighth Amendment. *See* Exh. K, District Court Docket. On February 21, 2024, the district court granted Mr. Doe's habeas petition and ordered that the government provide him with a bond hearing at which the government bear the burden of proving by clear and convincing evidence that Mr. Doe's continued detention is warranted. *See* Exh. L, District Court Decision.

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

40. Subsequently, on April 8, 2024, the Adelanto Immigration Court held a bond hearing for Mr. Doe. Morales Decl. at ¶ 3. The Immigration Judge denied bond, concluding that the Department of Homeland Security met its burden of proof as to flight risk and danger. *See* Exh. I, IJ's Bond Memorandum. Mr. Doe appealed, and on July 12, 2024, the BIA denied Mr. Doe's bond appeal, affirming the decision of the Immigration Judge. Exh. J, BIA's Bond Decision.

41. Meanwhile, the government filed an appeal of the district court's habeas order with the Ninth Circuit on April 19, 2024. Exh. M, Ninth Circuit Docket. On July 7, 2024, the Ninth Circuit granted the government's motion to hold the case in abeyance pending the issuance of the mandate in *Doe v. Garland*, 109 F.4th 1188 (9th Cir. 2024). The Ninth Circuit denied the petitioner's petition for panel rehearing and rehearing *en banc* on May 29, 2025. *See* ECF 89 in *Doe v. Garland*, No. 23-15361 (9th Cir. May 29, 2025). The mandate has yet to issue, has it has been stayed due to the pending adjudication of the petitioner's motion to stay the mandate, filed on June 4, 2025. *Id.* at ECF 90.

42. Mr. Doe has now been incarcerated by ICE without a bond hearing for 982 days and is very likely to remain detained for the foreseeable future, absent federal court intervention.

D. Detention at Golden State Annex

43. Mr. Doe has been detained for more than two and a half years at Golden State Annex, an immigration detention center owned and operated by GEO Group, Inc. ("GEO"), a private prison company that has facilities on three continents.[4] For years, immigrants detained at Golden State Annex have raised the alarm about unlivable and unsanitary housing conditions, as well as

[4] The GEO Group, Inc., https://www.geogroup.com/facilities/golden-state-annex/ (last visited June 18, 2025).

concerns regarding their treatment.[5]

44. These unsafe and unhealthy conditions have been present throughout Mr. Doe's detention at Golden State Annex. In July 2022, a group of individuals detained at Mesa Verde and Golden State Annex filed a complaint against GEO based on claims related to wage theft and forced labor, alleging, *inter alia*, that GEO fails to "maintain minimum standards of cleanliness and sanitation," leaving those detained to live in "intolerably filthy conditions, with mold growing in the showers, a stench emanating from the restrooms, and pest [*sic*] running rampant."[6] Two complaints filed with DHS's CRCL Office in August 2024 allege sexual abuse and retaliation against detainees who file grievances regarding confinement conditions.[7] The California

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[5] California Collaborative for Immigrant Justice, *Starving for Justice: The Denial of Proper Nutrition in Immigration Detention*, April 2022 *available at* https://www.ccijustice.org/_files/ugd/733055_c43b1cbbdda341b894045940622a6dc3.pdf at 7 (indicating that over half of survey respondents at Golden State Annex reported "receiving insects, hair and/or other foreign object in their meals. Those who found insects in their food specified cockroaches, flies and spiders."). *See also* CRCL Complaint: Retaliation Against Individuals in Immigration Detention at Mesa Verde Detention Facility and Golden State Annex, Sept. 12, 2022, available at https://www.ccijustice.org/laf-09-12-2022-mv-gsa at 3 ("[I]ndividuals detained at Mesa Verde have faced retaliation for asserting their right to decline participation in the "voluntary" work program, as well as for filing formal complaints documenting unjust conditions... Since [labor strikes by Dorm C and A began' ICE and GEO have moved individuals to solitary confinement, restricted access to programming, and attempted to transfer at least one strike participant to an out-of-state facility"). Jhabvala Romero, Farida, *ICE Detainees Making $1 a Day Sue Over Alleged Wage Theft*, July 16, 2022, available at https://www.kqed.org/news/11919749/ice-detainees-making-1-a-day-sue-over-alleged-wage-theft ("GEO pays the paltry daily rate of $1 to detainees who volunteer to clean dormitories and dining halls, do laundry, assist detainees with disabilities and do other tasks to maintain the facilities.").

[6] *Hernandez Gomez v. GEO Group, Inc.*, No. 1:22-cv-00868-ADA-CDB, ECF 1-2 (E.D. Cal. July 12, 2022).

[7] *See* CRCL Complaint, Asian Law Caucus (Aug. 27, 2024) at https://cdn.craft.cloud/5cd1c590-65ba-4ad2-a52c-b55e67f8f04b/assets/media/Programs/Immigrant-Rights/CRCL-Complaint-Redacted-IR-250101.pdf (complaint filed on behalf of six noncitizens alleging that "staff at Golden State Annex have subjected them to sexual abuse, gender-based harassment, retaliation,

Department of Justice's Immigration Detention Report, published in May 2025, notes that "the most frequent grievances by detainees involved food quality and quantity, sanitation of the units (including questions over who is responsible for the cleanliness of the units and detainee wages for the Voluntary Work Program), and staff."[8]

45. The grave concerns shared by detainees, advocates, and state officials about the unjust conditions at Golden State Annex are exacerbated by ICE's decision to rapidly increase the number of people sent to the detention center. *See* "Advocacy Letter: Urgent request to stop new intakes at Golden State Annex," CCIJ (March 11, 2024) at https://www.ccijustice.org/advocacy-gsa-population-increase (highlighting a rise in reports regarding failure to provide drinking water, timely and adequate medical care, soap or underwear and shoes, and disruptions to means and programming). The population at Golden State Annex has more than tripled, from 130 to 400 people, in the past year. *Id.* This coincides with reports of shrinking food portions and depleted medical inventory.[9]

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and violations of transgender care standards"); *see also* "Press Release: Civil Rights Complain Filed After Golden State Annex Officers Violently Attacked Detained People," CCIJ (Aug. 15, 2024) at https://www.ccijustice.org/post/civil-rights-complaint-gsa-a4-raid (complaint filed on behalf of a group of immigrants detained at Golden State Annex who were attacked by guards during a raid on April 15, 2024, describing that during the raid, guards "physically assaulted the people in their custody, destroyed their personal property, used pepper spray indiscriminately, verbally abused them and committed additional violations").

[8] Cal. Dept. of Justice, "Immigration Detention in California: A Comprehensive Review with a Focus on Mental Health," May 2025, 75, at oag.ca.gov/system/files/media/immigration-detention-2025.pdf?

[9] Kate Morrissey, "More people in ICE custody means smaller meals and delayed medical care, detainees say," Stocktonia.org (March 23, 2025) at https://stocktonia.org/news/immigration/2025/03/23/more-people-in-ice-custody-means-smaller-meals-and-delayed-medical-care-detainees-say/. *See also* Jasmine Garsd, "In recorded calls, reports of overcrowding and lack of food at ICE detention centers," NPR (June 6, 2025) at

46. Mr. Doe describes detention at Golden State Annex as "worse" than his incarceration in state prison. *See* Updated Doe Decl. at ¶ 4. The population of Mr. Doe's dormitory has nearly tripled in the past year. *Id.* at ¶ 9. Further, Mr. Doe reports delayed medical care for chronic conditions such as hypertension and hyperlipidemia. *Id.* at ¶ 11. He reports regular and prolonged illness, with symptoms lasting over a month. *Id.*

47. Moreover, Mr. Doe describes restrictions on his freedom of movement within the detention center that are more severe than in prison. *Id.* at ¶ 8. Only three hours of daily yard time are permitted to detainees, and insufficient guards to escort further limits Mr. Doe's access outside the dormitory. *Id.* Only two hours a week in the recreation room is permitted. *Id.* The CRC program that Mr. Doe attended was cancelled. *Id.* at ¶ 6. Mr. Doe reports that this is much more restrictive than state prison, where programs lasted most of the day, and no prior permission or escort was generally required to go to the recreation room, yard, or seek medical care. *Id.*

48. Mr. Doe spends most of his time confined to a crowded dormitory where there are not enough chairs for all dorm residents. *See id.* at ¶ 9. These conditions have worsened his anxiety, as Mr. Doe describes feeling more anxious as the dorm becomes more crowded. *Id.* The conditions of Mr. Doe's confinement impede his exercise and ability to obtain medical care and continue his technical education. *Id.* at ¶¶ 7, 10-11. While subject to prolonged immigration detention, Mr. Doe's physical, mental, and social condition will likely continue to deteriorate.

ARGUMENT

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https://www.npr.org/2025/06/05/nx-s1-5413364/concerns-over-conditions-in-u-s-immigration-detention-were-hearing-the-word-starving.

A. IMMIGRATION DETENTION VIOLATES SUBSTANTIVE DUE PROCESS WHEN ITS LENGTH AND NATURE BECOME PUNITIVE

49. "[D]ue process requires that the nature and duration of civil detention bear some reasonable relation to the purpose for which the individual is detained." *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). Otherwise, civil detention amounts to unlawful punishment. *Jones v. Blanas*, 393 F.3d 918, 931 (9th Cir. 2004) (quoting *Jackson*, 406 U.S. at 738).

50. Detention becomes punitive and violates substantive due process when it is "excessively prolonged" compared with its regulatory purpose. *United States v. Salerno*, 481 U.S. 739, 747 n.4 (1987). It also becomes punitive when conditions are too harsh. *Jones*, 393 F.3d at 932. When a civil detainee "is confined in conditions identical to, similar to, or more restrictive" than those in which criminal detainees are held, courts "presume that the detainee is being subject to 'punishment.'" *Id.* Conditions are also punitive when restrictions "are employed to achieve objectives that could be accomplished in so many alternative and less harsh methods." *Id.* (quoting *Hallstrom v. City of Garden City*, 991 F.2d 1473, 1484 (9th Cir. 1993)).

51. "[A]t some point, regardless of the risks, due process will require that [a person subject to prolonged civil detention] be released." *United States v. Torres*, 995 F.3d 695, 709-10 (9th Cir. 2021) (finding that a pretrial detainee's 21-month detention was "approaching the limits of what due process can tolerate"). "[T]he Due Process Clause endeavors to set outer limits at which risks to society must be accepted to avoid unconscionable deprivations of the liberty of individuals." *United States v. Gonzalez Claudio*, 806 F.2d 334, 343 (2d Cir. 1986) (holding that detention beyond fourteen months "would exceed even the flexible standards of due process.").

52. These fundamental principles apply equally to noncitizens detained by ICE. *See Mathews v. Diaz*, 426 U.S. 67, 77 (1976) (the Due Process Clause applies to every "person" in the United

States); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

53. Noncitizens in immigration detention—just like pretrial detainees or people held under civil process—cannot be detained under conditions tantamount to punishment. *See Wong Wing v. United States*, 163 U.S. 228, 237-38 (1896) (civil detention of a removable noncitizen violates the Constitution if it is punitive); *Jones*, 393 F.3d at 932; *Bell v. Wolfish*, 441 U.S. 520, 535 (1979).

54. The prohibition on punitive detention applies regardless of whether a noncitizen falls under section 1226(c), the mandatory detention provision. Although the Supreme Court upheld "brief" detention under § 1226(c) as constitutional in a facial challenge, "the fact that a statute serves its purpose in general fails to justify the detention of an individual in particular." *Demore v. Kim*, 538 U.S. 510, 561 (2003) (Souter, J., concurring). Even if mandatory detention is initially permissible, due process "imposes outer bounds on both the duration and conditions of civil immigration detention." *Doe v. Becerra*, 732 F. Supp. 3d 1071, 1080 (N.D. Cal. 2024). Indeed, "it is undisputed that at some point, ... detention can 'become excessively prolonged, and therefore punitive,' resulting in a due process violation. The point at which detention constitutes a due process violation requires a case-by-case analysis." *Eliazar G.C. v. Wofford*, No. 1:24-CV-01032-EPG-HC, 2025 WL 711190, at *8 (E.D. Cal. Mar. 5, 2025).

55. A recent decision from the Northern District defined the contours of substantive due process in a challenge to ICE detention. In that case, similar to Mr. Doe, the petitioner had been detained for more than two years at GSA awaiting the outcome of his removal proceedings. *Doe*, 732 F. Supp. 3d at 1076. He filed a habeas petition alleging both procedural and substantive due process violations based on his prolonged detention without a bond hearing. Judge Pitts initially ordered that he be granted a prolonged detention bond hearing and found that while his detention

may violate substantive due process, that claim should be held in abeyance pending the outcome of the bond hearing. *Doe v. Becerra*, 704 F. Supp. 3d 1006, 1020 (N.D. Cal. 2023) ("Mr. Doe's bond hearing might render his remaining substantive due process challenges moot."),

56. Judge Pitts returned to the substantive due process claim, however, after the petitioner was denied release by the IJ. *Doe v. Becerra*, 723 F. Supp. 3d 688, 689 (N.D. Cal. 2024). The court agreed that at some point—just as in the context of pretrial custody—ICE detention becomes excessively prolonged and so violates due process. *Id.* at 690 ("[T]he constitutional principles applicable to civil detainees are the same, even if the statutes and circumstances may differ.").

57. Drawing from Ninth Circuit cases involving pretrial detention and civil commitment, Judge Pitts identified five factors for ruling on when ICE detention violates substantive due process: (1) the length of detention; (2) the government's contribution to any delay; (3) the evidence supporting the determination that detention is warranted to prevent flight risk or community danger; (4) whether the government interests could be protected through less restrictive means; and (5) the conditions of detention and how they compare to criminal incarceration. *Id.* at *692 (citing *Torres*, 995 F.3d at 708 and *Jones*, 393 F.3d at 934). After briefing and evidentiary submissions from the parties, the court concluded that petitioner's 30-month detention was "excessive in relation to the government's [regulatory] purposes and has therefore become punitive in violation of [petitioner's] rights under the Due Process Clause of the Fifth Amendment." *Doe v. Becerra*, 732 F. Supp. 3d 1071, 1075 (N.D. Cal. 2024). Mr. Doe has since been released. *Doe v. Becerra*, 5:23-cv-04767-PCP, Dkt. 58 (N.D. Cal. May 23, 2024) (Order granting proposed sponsor and residence).

B. MR. DOE'S PROLONGED CIVIL DETENTION HAS BECOME PUNITIVE AND VIOLATES HIS SUBSTANTIVE RIGHT TO DUE PROCESS

58. As measured by the five factors identified by Judge Pitts, Mr. Doe's civil detention has become unduly punitive and violates his right to substantive due process.

1. The duration of Mr. Doe's detention is excessive

59. Mr. Doe has now been detained for over two years and eight months with no fixed end in sight. While the Constitution places no bright-line limit on the length of detention, more than 32 months is an "extraordinary amount of time to spend in civil detention, including immigration detention" and "*alone* suggests a potential due process violation." *Doe*, 732 F. Supp. 3d at 1083 (emphasis added) (finding 30 months of immigration detention violative of substantive due process).

60. Whatever period due process might tolerate has come and gone. Mr. Doe's detention has lasted six times the length of detention without review the Supreme Court permitted in *Demore*. *See Demore*, 538 U.S. at 529-30 (upholding "brief" detentions under Section 1226(c), which last "roughly a month and a half in the vast majority of cases in which it is invoked, and about five months in the minority of cases in which the [noncitizen] chooses to appeal"); *cf. Zadvydas*, 533 U.S. at 701 ("Congress previously doubted the constitutionality of detention for more than six months"). So far this fiscal year, noncitizens with criminal convictions have been detained for an average of 45.6 days.[10] Mr. Doe's detention has lasted over twenty one times that average.

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[10] *See* ICE, Detention FY 2025 YTD, *available at*: https://www.ice.gov/detain/detention-management

61. Mr. Doe's detention also far exceeds the duration that courts have found unconstitutional in the context of pretrial detention, where the "duration of confinement is obviously a central focus of [the court's] inquiry[.]" *See Gonzalez Claudio*, 806 F.2d at 340.

62. For instance, his detention is nearly a year longer than what the Ninth Circuit found "approach[es] the limits of what due process can tolerate" for a pre-trial defendant with multiple convictions for violent offenses, substance abuse issues, and a history of failing to appear in court. *See Torres*, 995 F.3d at 708-10. In *Torres*, the Court called defendant's twenty-one month detention "significant under any metric and deeply troubling," but declined to order his release because the majority of delays were attributable to the pandemic, and because he gave a Mirandized confession to the criminal charges. *Id.* at 709. The Court nonetheless declared that "due process demands that the district court begin [his] trial or reconsider bail subject to appropriate conditions very soon." *Id.* As another guidepost, the Second Circuit ruled that two to three-year detentions can only be justified under the most extraordinary circumstances, including where a defendant was charged with being a "key participant" in al Qaeda. *United States v. El-Hage*, 213 F.3d 74, 77, 81 (2d Cir. 2000) (upholding pretrial detention of thirty to thirty-three months where the defendant had been charged with conspiring to kill U.S. citizens as part of "the terrorist organization founded by [Osama] Bin Laden[.]"); *see also United States v. El-Gabrowny,* 35 F.3d 63, 65 (2d Cir. 1994) (finding that the defendant's "unquestionably" long detention, lasting likely 27 months before trial, did not violate due process where he was charged in connection to the 1993 World Trade Center bombing and with conspiracy to levy war against the United States); *cf. United States v. Briggs*, 697 F.3d 98, 103 (2d Cir. 2012) ("[V]ery long

detentions must be exceptional.").[11] Mr. Doe has spent as long in civil custody as what the Second Circuit permitted in the "extraordinary" cases of defendants held on criminal charges relating to mass murder.

63. Without this Court's intervention, Mr. Doe's detention will continue for many months and likely years longer. Mr. Doe has an appeal pending before the Board of Immigration Appeals ("BIA") and his immigration counsel expects his appeal to pend for a few months, if not longer. *See* Hong Decl. at ¶ 13. Given that the BIA adjudicated his *pro se* appeal in five months, it would be unsurprising if it took the agency longer to adjudicate an appeal with counsel and multiple experts.

64. Depending on the outcome on appeal, Mr. Doe could return to immigration court to continue his case or continue litigating another appeal. *Id.* Even if the agency moves faster than it

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[11] Other courts have determined that far shorter periods of pretrial detention can violate due process. *See, e.g., United States v. Zannino*, 798 F.2d 544, 548 (1st Cir. 1986) (finding that in "most cases," 16 months of pretrial detention would exceed the limits of due process, but approving "only a short, discrete, and finite additional period of detention" for a defendant accused of leading mob activities including murder and conspiracy); *United States v. Theron*, 782 F.2d 1510, 1516 (10th Cir. 1986) (holding the four-month detention of the defendant accused of fraud and conspiracy was "too long" and requiring release within thirty days if the trial did not begin); *United States v. Chen*, 820 F. Supp. 1205, 1209-10 (N.D. Cal. 1992) (finding that after almost one year of confinement, the due process interests of the defendants charged in connection with the "largest heroin seizure in United States history" overshadowed potential pretrial release concerns); *United States v. Lofranco*, 620 F. Supp. 1324, 1325 (N.D.N.Y. 1985) (holding a six-month period of detention unconstitutional for a defendant charged with complex drug crimes); *United States v. Gatto*, 750 F. Supp. 664, 674 (D.N.J. 1990) (finding that despite proof of defendants' dangerousness, including evidence of violent threats, intimidation, and use of weapons, the fifteen-month period of pretrial detention was "substantial" and violated due process); *United States v. Archambault*, 240 F. Supp. 2d 1082, 1088 (D.S.D. 2002) (ordering the defendant, charged with a crime of violence involving serious physical injury to his ex-partner, be released after almost twenty months of pretrial detention because further detention would "exceed the limits of due process and would become punitive.").

did previously, Mr. Doe will be detained for many months before his case concludes, as Mr. Doe intends to pursue judicial review of any adverse decision before the Ninth Circuit Court of Appeals. *Id.*; *see also Lopez v. Garland*, 631 F. Supp. 3d 870, 881 (E.D. Cal. 2022) (finding noncitizen's "administrative appeals and possible judicial review by the Ninth Circuit will be sufficiently lengthy such that this factor weighs in favor of [noncitizen]"). These non-speculative aspects of Mr. Doe's future detention further support release. *See, e.g.*, *Gonzales Claudio*, 806 F.2d at 341 (noting that the non-speculative additional 12-months of pretrial confinement contributed to a due process requirement for release); *United States v. Hare*, 873 F.2d 796, 797, 801 (5th Cir. 1989) (remanding for failure to consider the length of detention, including the "non-speculative nature of future detention" after ten months of defendant's pretrial detention for charges relating to drug trafficking and the import of over one million pounds of marijuana).

65. The duration of Mr. Doe's detention weighs overwhelmingly in favor of finding a due process violation.

2. The majority of Mr. Doe's detention is due to processing delay.

66. In the pretrial detention context, when the length of confinement exceeds two years "courts have typically upheld detention only if the government was not responsible for any significant portion of the delay." *United States v. Wright*, 649 F. Supp. 3d 1333, 1337 (S.D. Ga. 2022) (citing *U.S. v. Cos*, 2006 WL 4061168) (emphasis added); *United States v. Aileman*, 165 F.R.D. 571, 582-83 (N.D. Cal. 1996) (holding that 26 months of pretrial detention typically violates due process unless "the government did not bear responsibility for any significant portion of the delay and there were special circumstances indicating the risk of harm[.]").

67. Here, agency and Court processing delays lengthen Mr. Doe's civil detention. Court processing delays, even those that have appeared to be short or limited in time on their own, add

up to an extensive delay in Mr. Doe's case. *See* Morales Decl. at ¶¶ 16-17 (nearly a month between Mr. Doe's detention in 2022 and his first hearing); ¶ 19 (delay of nearly a month to schedule Mr. Doe's final hearing); ¶ 25 (delay of nearly three months for the agency to adjudicate Mr. Doe's successful motion to reopen); Exh. M, Ninth Circuit docket (reflecting processing time of nearly six months to adjudicate Mr. Doe's motion for appointment of counsel and an additional 61 days between order granting motion for appointment of counsel and the appointment of Ms. Hong); Hong Decl. at ¶ 7 (delay of nearly one month to schedule hearing before the Immigration Court post-remand); *Id.* at ¶ 9 (total of 50 days between final merits hearings before the IJ); ¶ 11 (34 days between close of evidentiary hearing and hearing date to issue oral decision). The issue of protracted immigration proceedings is well documented, and likely to continue in the foreseeable future. *See* Elizabeth Montano, *The Rise and Fall of Administrative Closure in Immigration Courts*, 129 Yale L.J. Forum 567, 580–81 (2020); *cf. Doe*, 2024 WL 2340779, at *7 (noting that "the immigration system is overextended").[12]

68. While any bad faith attempts to delay processing by the government weigh more heavily against it, courts have found that neutral reasons for delay can still be attributable to the government and support release. *See Michelin v. Oddo*, No. 3:23-CV-22, 2023 WL 5044929, at *7 (W.D. Pa. Aug. 8, 2023) ("The Court agrees with Petitioner that he is not responsible for the BIA's long delay in deciding the motion to reopen."); *United States v. Wright*, 649 F. Supp. 3d 1333, 1338-1339 (S.D. Ga. 2022) (finding that due process limits required release for the

[12] The University of Syracuse maintains statistics on the immigration court system. There is a current backlog of 3.58 million unadjudicated removal cases. *See* https://trac.syr.edu/phptools/immigration/backlog/.

defendant charged with causing a vehicle explosion resulting in severe injuries where delay was a result of both the government's litigation strategy and neutral factors, including the COVID-19 pandemic). *See c.f. Barker v. Wingo*, 407 U.S. 514, 531 (1972) ("A more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant."). "[I]ndividual actions by various actors in the immigration system, each of which takes only a reasonable amount of time to accomplish, can nevertheless result in the detention of a removable alien for an unreasonable, and ultimately unconstitutional, period of time." *Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 223 (3d Cir. 2011) *abrogated on other grounds by Jennings v. Rodriguez*, 583 U.S. 281 (2018). As such, the Court should find that the processing delays mentioned above should be attributed to the government.

69. Other time in this case relates to Mr. Doe's good-faith defenses to removal or attempts to locate counsel, which is at most a neutral reason for delay. Courts "cannot effectively punish [petitioners] for choosing to exercise their legal right to challenge the Government's case against them." *Chavez-Alvarez v. Warden York Cty. Prison*, 783 F.3d 469, 476 (3d Cir. 2015) *abrogated on other grounds by Jennings v. Rodriguez*, 583 U.S. 281 (2018); *see also* Exh. L ("But there is no indication that Petitioner acted in bad faith or purposefully sought to delay his proceedings. His interests in his physical freedom are not diminished because he chose to pursue entirely legitimate proceedings to which he is legally entitled."); *Lopez*, 631 F. Supp. 3d at 881 ("Petitioner is entitled to raise legitimate defenses to removal and such challenges to his removal cannot undermine his claim that detention has become unreasonable."). In this case, the BIA's reopening of Mr. Doe's proceedings is proof that his motion to reopen was filed in good faith and based on changed circumstances warranting reconsideration of his case by an IJ. Exh. P.

70. Much of Mr. Doe's lengthy detention was caused by processing delays. The rest of the time is, at most, a neutral factor. This counsels in favor of finding that his detention has become punitive.

3. The nature of Mr. Doe' detention is harsh

71. "[T]he government's choice to detain noncitizens like Mr. [Doe] in a crowded facility, with operations outsourced to a private contractor, informs the due process consideration of how long is too long." *See Doe*, 2024 WL 2340779, at *13 ("[H]arsh conditions multiply the burden on liberty for any given period."). Thirty-two months in a dorm with "limited access to medical care, legal assistance, and communications to the outside world is different, for constitutional purposes, from the same amount of time spent in more comfortable accommodations with greater access to services." *Id.* As the Third Circuit explained, if a "[noncitizen's] civil detention under § 1226(c) looks penal, that tilts the scales toward finding the detention unreasonable," and, as "the length of detention grows, so does the weight" given to that factor. *German Santos v. Warden Pike County Correctional Facility*, 965 F.3d 203, 211 (3d Cir. 2020).

72. Here, the Court should presume that Mr. Doe is being subjected to punishment because the conditions of his detention are "similar to, or more restrictive than" criminal incarceration. *See Jones*, 393 F.3d at 934; *Doe*, 2024 WL 2340779, at *4. GSA is a private detention center that was "previously used as a correctional facility." *Martinez Leiva v. Becerra*, No. 23-02027-CRB, 2023 WL 3688097, at *2 (N.D. Cal. May 25, 2023). "Alongside the people detained at GSA, state and federal officials have repeatedly raised concerns about the conditions at GSA." Exh. R, Declaration of Priya Patel (hereinafter "Patel Decl.") at ¶ 5.

73. Pro bono supervising attorney Priya Patel at the California Collaborative for Immigrant Justice ("CCIJ") has experience staffing and supervising a legal clinic at GSA. *Id.* at ¶ 3. For the

past 20 months, she has spoken with an average of five detainees per week. *Id.* Detainees' reports, as well as her personal observation of the deprivation of basic necessities, have formed the basis for at least five administrative complaints regarding conditions at Golden State Annex. *Id.* at ¶¶ 4-5. She describes "overuse of solitary confinement, poor quality and safety of food ... lack of consistent access to clothing and shoes, unwarranted use of force by staff, and sexual assault and harassment." *Id.* at ¶ 4. "Since the beginning of 2025, the population at GSA have only grown, exacerbating" problems at the facility. *Id.* at ¶ 19.

74. Government investigations confirm the inadequacy of conditions at GSA. In 2022, the California Division of Occupational Health & Safety ("Cal OSHA") cited GEO for workplace violations, including "one willful serious citation" for failure to establish procedures to reduce risk of exposure to aerosol transmissible diseases. Exh. U, Cal OSHA Statement of Interest (noting that "GEO has already denied Cal/OSHA access to potential detainee witnesses and has obstructed the investigation in several ways…There have been an alarming number of reports by worker detainees stating they are facing retaliation for cooperating[.]"). =

75. Even agencies within DHS have expressed concern. DHS's Office of Civil Rights and Civil Liberties ("CRCL") is investigating claims of sexually abusive pat downs by GSA staff, among other civil rights violations. Exh. S, Letter from Members of Congress to ICE (referring to CRCL investigation and expressing concern regarding dangerous work conditions, lack of nutritional meals, access to medical care, unsafe living conditions, and high commissary costs at GSA). The DHS Office of the Inspector General recently published the results of an unannounced visit to GSA in which investigators found numerous violations of the Performance-

Based National Detention Standards including those governing cleanliness and sanitation, prompt and effective communication with detainees, and the handling of medical grievances.[13]

76. Mr. Doe's personal experience at GSA reflects substandard and punitive conditions, which he describes as worse than any of the California prisons where he served time. Updated Doe Decl. at ¶¶ 4-11; *see also Doe*, 2024 WL 2340779, at *13. GSA affords him fewer liberties than state prison did—he has far less time outside of the dorm; and his health has suffered under poor conditions. Updated Doe Decl. at ¶¶ 8; 10-11. The self-improvement program Mr. Doe used to participate in at GSA have been cancelled. *Id.* at ¶ 6. He reports feeling more anxious now, due to the crowded and noisy dorm conditions, and experiencing delays in receiving medical care. *Id.* at ¶¶ 10-11 ("With all the people in the dorm, I feel like there is not enough air and I start to feel like I can't breath and like I am suffocating."). "It is hard to cope with the tools that [he has] access to, but [he does] his best." *Id.* at ¶ 10.

77. As in *Doe*, the Court should find that the conditions at GSA "are harsh—possibly harsh enough to be punitive in their own right, but certainly harsh enough to mean that Mr. [Doe's] continued detention under those conditions, after [32 months] and with no end currently in sight, has become punitive in light of the available alternatives." *See Doe*, 2024 WL 2340779, at *14.

4. Mr. Doe's is not a danger or a flight risk

78. Mr. Doe's detention does not serve its only permissible regulatory goals— safeguarding the community and ensuring his appearance for removal proceedings. When a noncitizen "poses

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[13] DHS, Office of the Inspector General, "Results of Unannounced Inspection of ICE's Golden State Annex in McFarland, California," dated April 18, 2024, at https://www.oig.dhs.gov/sites/default/files/assets/2024-04/OIG-24-23-Apr24.pdf.

no danger and is not a flight risk, all the government does in requiring detention is separate families and remove from the community breadwinners, caregivers, parents, siblings and employees." *Black v. Decker*, 103 F.4th 133, 154 (2d Cir. May 31, 2024) (cleaned up).

79. Mr. Doe's criminal history does not evince *current* danger. *See Singh v. Holder*, 638 F.3d 1196, 1206 (9th Cir. 2011) ("[N]ot all criminal convictions conclusively establish that a [noncitizen] presents a danger[,] even where the crimes are serious enough to render the [noncitizen] removable."); *Doe*, 2023 WL 8307557 at *9 (to "presume dangerousness to the community and risk of flight based solely on [a] past record does not satisfy due process.") (quoting *Ngo v. INS*, 192 F.3d 390, 398-99 (3d Cir. 1999)). While his 1997 convictions for attempted murder and assault with a firearm, as well as his 2017 conviction (for conduct that occurred in 2015) for assault committed in prison are relevant, they cannot be dispositive a decade later. Mr. Doe takes responsibility for the grave errors he committed and for which he was convicted of serious crimes.[14] *See* Exh. G, Tab B, at 4, 6; Doe Decl. at ¶¶ 11, 13-14, 30. But he already served a full, punitive sentence for those convictions.

[redacted]

80. Mr. Doe has done everything possible to show that he is a different man. In prison, he obtained his GED and had a commendable work history. Doe Decl. at ¶¶ 16-17; Flores Decl. at ¶ 20 ("All of his efforts outside of [the 2015 assault] have demonstrated positive programming. I strongly feel that he will have a successful transition back in the community because he has positive outlets."). Further, Mr. Doe's record is absent of use of physical force, weapons, or unlawful substance in any circumstances since April 2015. CDCR classified him as posing a low risk of recidivism. Flores Decl. at ¶ 20; *see also* Exh. G at Tab M.

81. Since his transfer to immigration custody in October 2022, Mr. Doe has tried to make the most of time by completing the limited courses offered, participating in Alcoholics Anonymous, and keeping himself busy. *See* Exh. E, Certificates of attendance and completion; Updated Doe Decl. at ¶ 17 ("These courses and class taught me tools to make better decisions, how to solve problems, and to think of the consequences before I act."). He participates in soccer tournaments, makes soap sculptures, and creates greeting cards. Updated Doe Decl. at ¶ 17. He worked with Mr. Ortiz to address the roots of his trauma and learned skills to address his emotions. *Id.* ("At these meetings, we would talk about my past, both in El Salvador and in prison."). [15] He keeps in

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bad acts do not demonstrate a propensity for future dangerousness" where the "impetus" for the previous offenses "has ceased").

[15] *See also* Exh. B at 2 ("Since March of 2024, I have met with [Mr. Doe] on numerous occasions to explore his life history and develop understating around the underlying issues that resulted in his involvement in the criminal justice system. Throughout this process, [Mr. Doe] began to open up about a series of traumatic experiences that he had not previously disclosed in detail before to any professional. The full disclosure of underlying events and the traumatic symptoms associated with them have been the source of renewed insight for [Mr. Doe]. He has demonstrated increased awareness into how they impacted his childhood, adulthood, and how hid chronic suppression of memories of terrifying events unfortunately contributed to poor decision-making.").

touch with his family and is an active participant in his immigration case. *Id.* at ¶ 18. DHS has never presented any evidence that Mr. Doe has "behaved in a way that suggests he remains dangerous" now. *See Doe*, 2023 WL 8307557 at *11. Nor has the government alleged anything more than "speculation about the general risk to public safety" if he is released. *Cf. Yedinak v. Superior Ct. of Riverside Cnty.*, 92 Cal. App. 5th 876, 884-85 (2023) (pretrial detention, even for a violent crime, "requires more than a mere possibility" of bodily harm).

82. Objective expert evidence supports the conclusion that Mr. Doe is not a danger. Earlier this year, Dr. Williams, a recognized expert in forensic psychology, reviewed documents associated with Mr. Doe's criminal history, interviewed Mr. Doe, and evaluated his risk of recidivism using widely recognized tools. Exh. C. Dr. Williams found notable that Mr. Doe's "prosocial attitudes and a history of consistent employment while in prison." *Id.* at 6. Based on his scores on the HCR-20 ("the world's most widely used risk assessment measure") and the PCL-R, Dr. Williams found that Mr. Doe had an "essentially zero risk of violent offense" if released in the community without supervision. *Id.* Indeed, Dr. Williams emphasized that, in his "clinical judgement," as a former evaluator of parole suitability for the Board of Parole Hearings of the California Corrections and Rehabilitation, Mr. Doe "poses essentially no risk of violence and should be considered fully rehabilitated." *Id.* Dr. Williams did not find any "red flags" that would cause him concern or cause him "to provide anything less than a full endorsement of unsupervised release." *Id.*

83. Further, Mr. Doe has every incentive to appear for future proceedings which will determine whether he can stay in the country he's called home since the early 80s. He has never absconded or failed to appear for any proceeding, and DHS did not present any evidence to show why alternatives to detention, such as ISAP or GPS monitoring, would be ineffective to

supervise and monitor Mr. Doe if released. *See* Doe Decl. at ¶ 12. Additionally, Mr. Doe has *pro bono* counsel to represent him before the agency and the Ninth Circuit, if necessary. Hong Decl. at ¶ 13.

84. Mr. Doe has a robust release plan, which includes housing and employment options, as well as access to a reentry program. *See* Exh. D, Letter from Mr. Doe's Aunt; Exh. G, Tabs O & Q, Employment and Reentry Options. Additionally, he has the support of Mr. Ortiz, a licensed clinical social worker, who has established a relationship with Mr. Doe and is familiar with his background and needs. *See* Exh. G, Tab B; Morales Decl. at ¶ 5.

85. Finally, Mr. Doe has extensive family and community support to ensure his successful reintegration into the community, including 12 family members who submitted letters before the Immigration Court in support of his release. *See* Exh. G, Tab N. This includes his two U.S. citizen children, U.S. citizen siblings, aunts, uncle, and cousins. *Id.* Thus, there is no reason to believe he poses *any* risk of flight, much less a risk that cannot be mitigated. Moreover, even if there were strong evidence of flight risk or danger, it "cannot justify unlimited civil detention." *See Torres*, 995 F.3d at 710. Due process "always requires some degree of balance and proportionality." *Doe*, 2024 WL 2340779, at *10. Mr. Doe's current detention is disproportionate given the evidence that he poses no risk to the community.

5. Less restrictive alternatives can meet the government's objectives

86. Where a restriction short of detention can mitigate flight risk or danger, the government's interest in detention cannot outweigh an individual's interest in liberty. *See Bell*, 441 U.S. at 538, 539 n.20 (detention is punitive if conditions are employed to "achieve objectives that could be accomplished in so many alternative and less harsh methods."). To the extent Mr. Doe poses *any*

risk of danger or flight, the government's objectives can be met through less restrictive means than incarceration.

87. Tailored conditions of release can address the government's concerns while ensuring that a noncitizen's liberty interest is not harmed by needless incarceration.[16] "If alternatives can mitigate risks and protect the government's interests" then detention is "unconstitutionally punitive." *Doe*, 2023 WL 8307557 at *12. *See also Aileman,* 165 F.R.D. at 580 (finding that the proper focus for evaluating risk is "how big that threat would be if the defendant were released on stringent conditions aimed at reducing as much as possible the likelihood of harm to the threatened regulatory interests.").

88. In the context of pretrial confinement, other circuits have found that due process requires consideration of less restrictive alternatives to lengthy detention. *See, e.g., United States v. Warneke,* 199 F.3d 906, 909 (7th Cir. 1999) (expressing deep concern about the defendants 17-month period of pretrial detention and determining that the lower court would be "obliged to consider a less restrictive alternative to straight pretrial detention" if the complex multi-

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[16] The Bail Reform Act as well as the bail schemes of all states in this circuit require courts to consider release conditions *before* ordering a pretrial defendant held without bail. *See e.g.*, 18 U.S.C. § 3142(c)(1) (pretrial detention only permissible if "no condition or combination of conditions will reasonably assure the appearance of the person…and the safety of any other person and the community."); Alaska Stat. § 12.30.011(b); Ariz. Rev. Stat. § 13-3961(d); *In re Humphrey*, 11 Cal. 5th 135, 154 (2021); *In re Brown*, 76 Cal. App. 5th 296, 306-307 (2022); Haw. Rev. Stat. § 804-7.1; Idaho Code § 19-2904; Mont. Code § 46-9-106; Nev. Rev. Stat. § 178.4851 (1); Or. Rev. Stat. § 135.260; Wash. Super. Ct. Crim. R. 3.2. As someone held in civil detention, Mr. Doe is "entitled to protections at least as great as those afforded to an individual…accused but not convicted of a crime." *See Jones*, 393 F.3d at 932. Therefore, the Court should consider whether any less restrictive means can reasonably assure the safety of the community.

defendant trial did not begin within a few months); *United States v. Ojeda Rios,* 846 F.2d 167, 169 (2d. Cir. 1988) (holding that due process could not tolerate any further detention beyond 32-months and requiring release with imposed conditions for a defendant charged with violent acts and alleged membership in a paramilitary group).

89. ICE has tools at its disposal to ensure Mr. Doe's participation in removal proceedings until a final decision is rendered. Alternatives to detention ("ATDs"), including in-person check-ins with ICE and phone calls from the Intensive Supervision Appearance Program ("ISAP"), have a near-perfect success rate at achieving the primary purpose of detention: ensuring that noncitizens appear at future hearings. *Zadvydas*, 533 U.S. at 690; *Hernandez*, 872 F.3d at 991. *See also* Exh. V, ICE ATD webpage (describing ATD options); Exh. X, "The Real Alternatives to Detention" (addressing ADT options and effectiveness). The Ninth Circuit has observed that ISAP, which relies on various alternative release conditions, resulted in a 99% attendance rate at all EOIR hearings and a 95% attendance rate at final hearings. *Hernandez*, 872 F.3d at 991. So far this fiscal year to April 2025, 98.5% of individuals released on ATDs attended their court appearances and 87.9% attended their final court hearings.[17]

90. Mr. Doe's continued supervision on parole, coupled with ATDs, can achieve the government's objectives without the total deprivation of liberty he currently faces.

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[17] *See* ICE, Alternatives to Detention FY 2025 YTD at https://www.ice.gov/detain/detention-management. As of FY 2024, 98.6% of individuals released on ATD attended court and 90.4% attended their final hearings. *Id.* at FY 2024 Detention Statistics. According to a report on ISAP by DHS, the "vast majority of ATD participants from FY 2015 through FY 2020 were compliant with the requirements of the program. The success rate for single adults at the time the ATD was terminated ranged from 72.7 percent to 88.9 percent." Exh. W, DHS ISAP Report at 10.

C. MR. DOE'S RELEASE UNDER CONDITIONS IS THE PROPER REMEDY

91. "Weighed together, these five factors demonstrate that Mr. Doe's detention has become excessive in relation to the government's interests" and the Court should order his release. *Doe v. Becerra*, 732 F. Supp. 3d 1071, 1089 (N.D. Cal. 2024). The 32 months total Mr. Doe has been detained "far surpass" the 21 months the Ninth Circuit found to be constitutionally suspect in *Torres*, "even in the face of much stronger evidence [there] justifying continued detention." *Id.* Mr. Doe has spent this time detained under harsh conditions which restrict his liberty despite demonstrating a compelling case for immigration protection. The government is responsible for the majority of the delay, given the lengthy delay in processing his case. Although Mr. Doe committed serious offenses, he has demonstrated rehabilitation in the intervening decade. An expert in recidivism found that he poses essentially no risk of re-offense. Moreover, the government has submitted no evidence post-dating 2017 to suggest that Mr. Doe remains dangerous. *See* Exh. H. Moreover, Mr. Doe is not a flight risk, as he has ample family and community ties, and amply reason to continue working with his pro bono immigration attorney to seek protection from removal. *See supra*. Further, alternatives to detention can mitigate any risk of flight and "potentially reduce the danger Mr. Doe might pose." *Doe*, 732 F. Supp. 3d at 1090.

CLAIM FOR RELIEF

Violation of the Substantive Component of the Due Process Clause of the Fifth Amendment

92. Mr. Doe re-alleges and incorporates by reference the paragraphs above.

93. 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.

94. The only valid purpose for civil immigration detention is to safeguard the community and prevent flight during removal proceedings. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

95. Due process prohibits the government from punishing people through civil detention. Civil detention becomes punitive when its duration or nature is unreasonable relative to the purpose for which the person is detained—in this case, protecting the community and preventing flight during removal proceedings.

96. The government violates substantive due process when civil detention is excessive in relation to a governmental interest, or the government could accomplish its interests through less restrictive means.

97. Mr. Doe's detention is excessive—both in duration and nature—in relation to the government's interest in continuing to detain him. The government's interest could be satisfied by Mr. Doe's release on appropriate conditions.

98. For these reasons, Mr. Doe's prolonged civil detention violates substantive due process.

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PRAYER FOR RELIEF

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

1. Exercise jurisdiction over this matter;
2. Enjoin Respondent from transferring Mr. Doe to another detention facility while habeas proceedings are pending;
3. Declare that Mr. Doe's prolonged civil detention violates the Due Process Clause of the Fifth Amendment and constitutes unlawful punishment;
4. Issue a writ of habeas corpus and order Respondents to immediately release Mr. Doe from DHS' physical custody under appropriate conditions;
5. Award reasonable costs and attorney fees; and
6. Grant further relief as the Court deems just and proper.

Dated: June 19, 2025

Respectfully submitted,

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