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15 **IN THE UNITED STATES DISTRICT COURT**  
16 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
17

18 Abdulaziz Abduraimov,

19 Petitioner,

20 v.  
21

22 TONYA ANDREWS, Facility Administrator of  
Golden State Annex Detention Facility,

23  
24 Respondent.  
25

Case No. 1:25-cv-00843-EPG

**PETITIONER'S OPPOSITION TO  
RESPONDENT'S "RETURN" AND  
MOTION TO DISMISS PETITION  
FOR WRIT OF HABEAS CORPUS**

Judge: The Honorable Erica P. Grosjean

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1 INTRODUCTION

2 In his Petition for Writ of Habeas Corpus [Dkt. 1] (“Petition” or “Pet.”), Petitioner  
3 established that he has already experienced prolonged detention in Immigration & Customs  
4 Enforcement (“ICE”) custody of nearly two years, and therefore, the Fifth Amendment Due  
5 Process Clause requires that he be afforded a bond hearing. See Pet. ¶¶ 53-69. Respondent’s  
6 Motion to Dismiss<sup>1</sup> [Dkt. 16] (“Motion” or “Mtn.”) offers three grounds for dismissing the  
7 Petition. All are unpersuasive.

8 First, Respondent argues that procedural due process is not available to persons, like  
9 Petitioner, for whom 8 U.S.C. §1225(b) authorizes detention through the entirety of removal  
10 proceedings. Mtn. at 3-5. However, Respondent bases her argument on factually and legally  
11 incorrect assertions. Contrary to Petitioner’s representation in the Motion, Petitioner was paroled  
12 into the United States, and the record contains no indication that Petitioner’s parole was ever  
13 revoked. For legal support, Respondent relies on *Jennings v. Rodriguez*, 583 U.S. 281 (2018),  
14 which fails to address the primary question before this Court: whether a Section 1225(b) detainee  
15 has a constitutional right to a first bond hearing. The other case cited by Respondent – *McGautha*  
16 *v. California*, 402 U.S. 183 (1971) – involved an appeal of a murder conviction and did not  
17 consider the constitutional rights of a Section 1225(b) detainee, much less one whom an  
18 Immigration Judge (“IJ”) held, after hearing, was deserving of asylum.

19 Second, Respondent contends that Petitioner has no constitutional due process rights  
20 because he must be considered an “applicant for admission” under Section 1225(a)(1) and because  
21 detainees who are granted parole upon entry purportedly have no special due process rights. Mtn.  
22 6-7. On the contrary, the law is well settled that applicants for admission have protections –  
23 including due process rights – beyond those set forth in the Immigration and Naturalization Act  
24 (“INA”). See, e.g., *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001); *Morrissey v. Brewer*, 408 U.S.  
25 471 (1972) and *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976).

26 Finally, while conceding that Petitioner would be entitled to a bond hearing if this Court

27 \_\_\_\_\_  
28 <sup>1</sup> Respondent styles her Motion as both a “Motion to Dismiss” and a “Return”. Because of the  
substantive nature of Respondent’s pleading, Petitioner treats it as a Motion.

1 applies the U.S. Supreme Court’s *Mathews* factors (which it should), Respondent urges the Court  
2 instead to evaluate Petitioner’s right to a bond hearing under a modification of the test applied by a  
3 District Court in *Lopez v. Garland*, 631 F.Supp.3d 870, 879 (E.D. Cal. 2022). *See* Mtn. at 7-8. As  
4 discussed further below, the argument fails not only because *Mathews* applies, but also because  
5 applying the *Lopez* test would yield the same result, since all of the *Lopez* factors weigh in favor  
6 of granting Petitioner a bond hearing.

7 In sum, Petitioner’s Due Process rights require that he be granted a bond hearing without  
8 further delay. Therefore, the Court should grant the Petition.

9 **ARGUMENT**

10 I Petitioner Can Seek Habeas Review of His Unreasonable, Prolonged Detention

11 As a threshold matter, Respondent argues in her Motion that procedural due process  
12 review is not available for mandatory detention under 8 U.S.C. § 1225(b). *See* Mtn. at 3-5.  
13 Respondent is wrong. Detainees subject to detention under § 1225(b) are still entitled to  
14 constitutional due process. *See Doe v. Becerra*, No. 2:25-CV-00647-DJC-DMC, 2025 WL  
15 691664, at \*3 (E.D. Cal. Mar. 3, 2025) (finding that an individual detained under § 1225(b) was  
16 entitled to due process because “the Due Process Clause applies to all ‘persons’ within the borders  
17 of the United States, regardless of immigration status”) (citing *Zadvydas*, 533 U.S. at 693)). And  
18 due process requires that Petitioner be afforded an opportunity to contest the necessity of his  
19 detention. *See id.* at \*4 (“Due Process protects against immigration decisions [sic] detention that is  
20 not reasonably related to the legitimate purpose of effectuating removal or protecting against danger  
21 and flight risk.”) (citing *Padilla v. U.S. Immigr. & Customs Enf’t*, 704 F.Supp.3d 1163, 1172 (W.D.  
22 Wash. 2023)).

23 Respondent advances three arguments in an effort to support her assertion that Petitioner  
24 has no constitutional right to a bond hearing: (1) as an “applicant for admission,” Petitioner has  
25 no constitutional due process rights; (2) the Supreme Court’s holding in *Jennings* requires that  
26 Petitioner be subject to mandatory detention pending full removal proceedings; and (3) the  
27 Supreme Court’s holding in *McGautha* justifies Petitioner’s prolonged detention. Each of  
28 Respondent’s assertions lack merit. Mtn. at 3-5.

1 First, Respondent suggests that Petitioner was not “admitted or paroled” into this country,  
2 and therefore, he is not entitled to immediate release. *See* Mtn. at 3-4. Yet ***Respondent’s own***  
3 ***declarant*** acknowledges that Petitioner was “paroled into the United States.” *See* Declaration of  
4 Charles Gallenkamp [Dkt. 16-1] (“Gallencamp Decl.”) Ex. 1 at 2 (petitioner “paroled into the  
5 United States pending EOIR Hearing”). Respondent offers no evidence that Petitioner’s parole  
6 was rescinded or that the purposes of the parole were fulfilled.

7 Next, Respondent cites *Jennings*, 583 U.S. at 297, to argue that Petitioner has no *statutory*  
8 right to *periodic* bond hearings. *See* Mtn. at 3-4. However, that case says nothing about  
9 detainees’ *constitutional* entitlement to a *first* bond hearing. *See Kydyrali v. Wolf*, 499 F.Supp.3d  
10 768, 770 (S.D. Cal. 2020) (finding that *Jennings* did not decide whether § 1225(b) detainees are  
11 entitled to a bond hearing under due process).<sup>2</sup> Indeed, on remand in *Jennings*, the Ninth Circuit  
12 rejected the proposition that due process is inapplicable to arbitrary prolonged detention under §  
13 1225(b):

14 We have grave doubts that any statute that allows for arbitrary prolonged  
15 detention without any process is constitutional or that those who founded  
16 our democracy precisely to protect against the government’s arbitrary  
deprivation of liberty would have thought so. Arbitrary civil detention is  
not a feature of our American government ... [and] violates due process  
outside of “certain special and narrow nonpunitive circumstances.”

17 *Rodriguez v. Marin*, 909 F.3d 252, 256-57 (9th Cir. 2018) (quoting *Zadvydus*, 533 U.S.  
18 at 690); *see also Eliazar G.C. v. Wofford*, No. 1:24-CV-01032-EPG-HC, 2025 WL 711190, at \*5  
19 (E.D. Cal. Mar. 5, 2025) (observing that if *Jennings* and *Demore* foreclosed due process relief  
20 under § 1226(c), then “the *Jennings* Court would have had no reason to remand to the Ninth  
21 Circuit ‘to consider ... in the first instance’ the detainees’ argument that ‘[a]bsent ... a bond-  
22 hearing requirement, ... [section 1226(c)] would violate the Due Process Clause of the Fifth  
23 Amendment.’” (citation omitted)). District courts post-*Jennings* similarly have concluded that

24 \_\_\_\_\_  
25 <sup>2</sup> For this same reason, *Doherty v. Thornburgh*, 943 F.2d 204, 211 (2d Cir. 1991) offers  
26 Respondent no shelter. In *Doherty*, unlike here, the petitioner already had a bond hearing before a  
27 District Judge for the Southern District of New York, at which he was determined to be a danger  
28 and a flight risk, in no small part due to the petitioner’s having migrated to the United States after  
escaping prison in the United Kingdom using a false passport. *Id.* at 205 (holding in connection  
with noncitizen habeas petitioner who was confined without bail for eight years did not violate  
substantive due process).

1 prolonged mandatory detention pending removal proceedings without a bond hearing violates due  
2 process at some point and have granted bond hearings on that basis. *See, e.g., Eliazar G.C.*, 2025  
3 WL 711190, at \*5; *Banda v. McAleenan*, 385 F.Supp.3d 1099, 1116 (W.D. Wash. 2019);  
4 *Kydyrali*, 499 F.Supp.3d at 774; *see also* ECF No. 1 ¶¶ 44, 46 (collecting cases).

5 Finally, Respondent attempts to mislead the Court by arguing that the Supreme Court in  
6 *McGautha v. California* upheld the constitutionality of subjecting aliens to continued mandatory  
7 detention. *See* Mtn. at 4-5 (citing *McGautha*, 402 U.S. at 213). In fact, *McGautha* has no applicability  
8 to any issues before this Court as it did not involve, address or discuss any immigration detention-  
9 related issues (much less Section 1225(b)). Not only that, but *McGautha does not contain the*  
10 ***quotation that Respondent attributes to that holding.*** That quote appears instead in *Demore v. Kim*,  
11 538 U.S. 510 (2003),<sup>3</sup> which supports Petitioner’s request for a bond hearing.

12 In *Demore*, the petitioner argued that due process required a bond hearing pending removal  
13 proceedings despite 8 U.S.C. § 1226(c)’s denial of such a hearing. *See id.* at 514-15, 531. The  
14 Court held that due process did not automatically require a bond hearing for people with statutorily  
15 enumerated convictions during the “*limited period* of [the detainee’s] removal proceedings.” *Id.*  
16 at 531 (emphasis added). However, and contrary to what Respondent suggests, *Demore* does not  
17 foreclose as-applied constitutional challenges to prolonged detention under § 1226(c), much less  
18 to prolonged detention under § 1225(b). *Id.* at 532 (Kennedy, J., concurring) (clarifying that,  
19 “since the Due Process Clause prohibits arbitrary deprivations of liberty, a lawful permanent  
20 resident alien such as respondent could be entitled to an individualized determination as to his risk  
21 of flight and dangerousness if the continued detention became unreasonable or unjustified.”); *see*  
22 *also Jennings*, 583 U.S. at 312; *Nielsen v. Preap*, 586 U.S. 392, 420 (2019) (“Our decision today on

23 \_\_\_\_\_  
24 <sup>3</sup> The quote that Respondent falsely attributes to *McGautha*, that was actually set forth in *Demore*,  
reads:

25 “[Petitioner] contends that the length of detention required to appeal may deter  
26 [noncitizens] from exercising their right to do so ... however ‘the legal system ...  
27 is replete with situations requiring the making of difficult judgments as to which  
course to follow,’ and ... there is no constitutional prohibition against requiring  
parties to make such choices.”

28 *Demore*, 538 U.S. at 530, n.14.

1 the meaning of [§ 1226(c)] does not foreclose as-applied challenges”). Specifically, where, as  
2 here, a noncitizen has been detained for a prolonged period and has already been granted asylum  
3 by the IJ,<sup>4</sup> *Demore* does not preclude an individualized hearing under due process. *See id.* at 532-  
4 33. (Kennedy, J., concurring); *see also Rodriguez v. Marin*, 909 F.3d at 256 (“We have grave  
5 doubts that any statute that allows for arbitrary prolonged detention without any process is  
6 constitutional or that those who founded our democracy precisely to protect against the  
7 government’s arbitrary deprivation of liberty would have thought so.”).

8 Further, in contrast to the facts in *Demore*, Petitioner has been detained for nearly **two**  
9 **years**, over fifteen times the 47-day period deemed “average” and presumptively permissible in  
10 *Demore*, and longer than the periods in many cases holding that a 1225(b) detainee is entitled to a  
11 bond hearing. *See id.* at 531; *see also Doe*, 2025 WL 691664, at \*5 (granting a bond hearing for an  
12 individual held for two months under § 1225(b)); *Akhmadjanov v. Oddo*, No. CV 3:25-35, 2025  
13 WL 660663, at \*4 (W.D. Pa. Feb. 28, 2025) (granting a bond hearing for an individual held for  
14 seventeen months under § 1225(b)).

15 Similarly, Respondent falsely asserts that “all underlying delay” is Petitioner’s fault. As  
16 discussed further below, Respondent’s attempt to put the blame for “delay” on Petitioner  
17 misrepresents the record, but even if Respondent’s characterization were accurate, Respondent  
18 cites no case holding that prolonged detention without a bond hearing is constitutionally permissible  
19 merely because the noncitizen has exercised their statutory right to apply for asylum.<sup>5</sup>

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22 <sup>4</sup> As discussed in Section C.1 *infra*, the Government appealed that decision, and the Board of  
23 Immigration Appeals (“BIA”) recently remanded the decision back to the IC for further factual  
24 findings. Regardless, this Court should still find that Petitioner has a right to a bond hearing under  
25 either the *Mathews* or *Lopez* tests because his detention will continue for an indefinite period and  
Petitioner is not at fault for the additional delay.

26 <sup>5</sup> Respondent asks the Court to “dismiss any claims outside of the request for a bond hearing.”  
27 Mtn. at 5. However, Respondent provides no rationale for this Court to deny the additional relief  
28 requested by Petitioner: (1) a declaration that Petitioner’s ongoing prolonged detention violates the  
Due Process Clause of the Fifth Amendment; and (2) an award of costs and attorneys’ fees under  
the Equal Access to Justice Act. *See* Petition at 19. Accordingly, the Court should grant this relief  
as well when it grants the Petition.

1 II Petitioner Has Constitutional Due Process Rights to Challenge His Prolonged Detention  
2 Beyond Those Provided in Section 1225(b)

3 Respondent next argues that Petitioner has no due process rights because (1) he is  
4 considered an “applicant for admission” under Section 1225(a)(1), and therefore, he can only  
5 receive the procedural protections afforded by statute, and (2) detainees who, like Petitioner, are  
6 granted parole upon entry, do not have special due process rights. Mtn. at 6-7. As discussed  
7 below, Respondent has it wrong on both counts.

8 A. Even if Petitioner is Considered an “Applicant for Admission,” He is Still Entitled  
9 to Due Process Rights

10 Petitioner does not dispute that, consistent with the Supreme Court holdings in *Knauff* and  
11 *Landon*, Congress has the power to set the procedures to be followed in determining whether a  
12 noncitizen should be admitted into the country. See Mtn. at 6. The Court has long interpreted “the  
13 Constitution [to] give[] ‘the political department of the government’ plenary authority to decide  
14 which [noncitizens] to admit,” *Department of Homeland Security v. Thuraissigiam*, 591 U.S.  
15 103, 139 (2020) (quoting *Nishimura Ekiu v. United States*, 142 U.S. 651, 659 (1892)), “and a  
16 concomitant of that power is the power to set the procedures to be followed in determining  
17 whether a[] [noncitizen] should be admitted.”<sup>6</sup> *Id.* (citing *United States ex rel. Knauff v.*  
18 *Shaughnessy*, 338 U.S. 537, 544 (1950)).

19  
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22 <sup>6</sup> Respondent incorrectly suggests that no binding appellate precedent has applied a balancing test  
23 in the context of detention under §1225(b)(1)(B)(ii). See Mtn. at 5. To the contrary, the Ninth  
24 Circuit has deployed the balancing of *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), trans-  
25 contextually to all manner of challenge to immigration detention procedures, without  
26 distinguishing between detention provisions. See, e.g., *Rodriguez Diaz v. Garland*, 53 F.4th 1189,  
27 1206-8 (9th Cir. 2022) (applying *Mathews* to § 1226(a) because “it remains a flexible test”); *Singh*  
28 *v. Holder*, 638 F.3d 1196, 1204- 05 (9th Cir. 2011) (citing *Diouf*’s rejection of a distinction  
between 1231(a)(6) detainees—who have a final order—and 1226(a) detainees, because  
 “[r]egardless of the stage of the proceedings, the same important interest is at stake—freedom  
 from prolonged detention.”). And beyond the detention context, the Ninth Circuit has used  
 *Mathews* to assess due process challenges to immigration proceedings. *Singh*, 638 F.3d at 1206  
 (collecting cases); see also *Landon v. Plasencia*, 459 U.S. 21, 34-35 (1982) (applying *Mathews* to  
 due process challenge to exclusion hearing procedures).

1 But neither *Thuraissigiam* nor its predecessors limit Petitioner’s right to challenge his  
 2 detention to INA procedures.<sup>7</sup> Unlike Petitioner here, the habeas petitioner in *Thuraissigiam* did  
 3 not challenge “unlawful executive detention” or seek a court-ordered bond hearing to assess the  
 4 grounds for his continued detention. 591 U.S. at 127 (citation omitted). Rather, Mr. Thuraissigiam  
 5 filed a habeas petition to challenge alleged flaws in his credible fear proceedings, which resulted  
 6 in a finding that he did not have a credible fear of persecution in his country of origin. *Id.* at  
 7 114. The remedy he sought was a “new opportunity to apply for asylum[,]” without which, he  
 8 would remain in an expedited removal posture until final deportation. *Id.* at 115. Similarly, in  
 9 *Knauff*, the petitioner challenged “the right of the Attorney General to exclude her without a  
 10 hearing for security reasons.” 388 U.S. at 540. Along the same lines, *Landon v. Plasencia*, 459  
 11 U.S. 21, 32 (1982) considered whether the question of whether the detainee was attempting to  
 12 “enter” the United States could be litigated only in a deportation hearing and not in an exclusion  
 13 hearing.

14 Nothing in *Landon*, *Thuraissigiam*, or *Knauff* restricted the scope of the Due Process  
 15 Clause for noncitizens in Petitioner’s posture who are detained – not because of criminal history  
 16 or national security concerns – but because their bona fide asylum claims were transferred to  
 17 immigration court.

18 Following *Thuraissigiam*, courts have continued to recognize that challenges to prolonged  
 19 detention for individuals in Petitioner’s posture do not offend jurisprudence regarding Congress’  
 20 plenary power over admission and exclusion procedures. *See, e.g., Padilla*, 704 F.Supp.3d at  
 21 1170 (“The Court stands unconvinced that the Supreme Court’s decision in *Thuraissigiam* requires  
 22 dismissal of Plaintiffs’ due process claim.”); *Jatta v. Clark*, No. C19-2086-MJP-MAT, 2020 WL  
 23 7138006, at \*2 (W.D. Wash. Dec. 5, 2020) (holding that *Thuraissigiam* is “inapposite” to a  
 24 due process challenge to detention); *Leke v. Hott*, 521 F.Supp.3d 597, 604 (E.D. Va. 2021) (“Quite

25  
 26 <sup>7</sup> The statute only provides ICE with generalized discretion to consider parole “on a case-by-case  
 27 basis for urgent humanitarian reasons or significant public benefit[.]” 8 C.F.R. § 212.5 (b). That  
 28 discretion was recently taken away at a national level – ICE “field offices no longer have the  
 option to discretionarily release [noncitizens]” on parole. U.S. Immigr. and Customs Enf’t Mem.,  
 No. 1:25-cv-01613-JRR, Dkt. 40-3, 2 (D. Md. filed June 30, 2025), attached as Eno Decl. Ex. 1.  
 At this time, Petitioner has no option for seeking release that is offered by the statute.

1 clearly, *Thuraissigiam* does not govern here, as the Supreme Court there addressed the singular  
2 issue of judicial review of credible fear determinations and did not decide the issue of an  
3 Immigration Judge’s review of prolonged and indefinite detention.”); *Mbalivoto v. Holt*, 527  
4 F.Supp.3d 838, 844–48 (E.D. Va. 2020) (similar).

5 In fact, the Supreme Court in *Zadvydas* rejected an argument that the plenary power  
6 doctrine means noncitizens have no due process right to challenge detention. The government  
7 in that case asserted broadly that Congress’s “plenary power” required the “the Judicial Branch  
8 [to] defer to Executive and Legislative Branch decisionmaking in [immigration law],”  
9 including as to the detention at issue in that case. *Zadvydas*, 533 U.S. at 695. The Court  
10 rejected that argument, stating that the plenary power “is subject to important constitutional  
11 limitations.” *Id.* The Court further explained that Congress’s plenary power does not apply where  
12 a noncitizen challenges “an indefinite term of imprisonment within the United States.” *Id.* The  
13 same is true here, where Petitioner alleges that Respondent has unlawfully detained him without a  
14 hearing, and that his detention will continue for months or years. Pet. at ¶¶ 6, 7, 42; *see also*  
15 *Hernandez v. Sessions*, 872 F.3d 976, 990 n.17 (9th Cir. 2017) (stating that plenary power  
16 doctrine did not change the fact that the “Due Process Clause stands as a significant constraint” on  
17 the government’s detention authority); *Phan v. Reno*, 56 F.Supp.2d 1149, 1155 (W.D. Wash. 1999)  
18 (concluding that the plenary power doctrine does not apply to certain immigration detention  
19 challenges). Indeed, Petitioner, whose grant of asylum was recently remanded back to the IJ by  
20 the BIA for additional factual findings, has an even stronger claim than the petitioners in *Zadvydas*,  
21 who had been ordered removed, and he seeks a more modest remedy of neutral review of his  
22 detention, not outright release.

23 In sum, although the admission and exclusion procedures provided by the INA meet  
24 constitutional due process requirements, those procedures are not relevant to the due process rights  
25 owed to an immigrant detainee.

26 B. The Due Process Protections Afforded by *Morrissey* Apply Here

27 In his Petition, Petitioner established that due process requires that parolees receive an  
28 individualized hearing because they have a liberty interest in their conditional release. *See* Pet. ¶¶

1 48-55 (citations omitted). Of the near dozen authorities cited by Petitioner, Respondent tries – and  
2 fails – to address only two of them: *Morrissey v. Brewer*, 408 U.S. 471 (1972) and *Mathews v.*  
3 *Eldridge*, 424 U.S. 319 (1976). See Mtn. at 6. Contrary to Respondent’s claims, both of these  
4 decisions have been applied to immigrant detainees who were granted parole upon entry and  
5 recognized that they are entitled to due process protection.

6 Respondent urges the Court to disregard the *Morrissey* holding because it “arose from the  
7 due process requirement for a hearing for revocation of parole ... not ... in the context of  
8 immigration.” Mtn. at 6-7. But courts, including in this district, have evaluated due process  
9 challenges to immigration parole revocation under *Mathews*. See, e.g., *Salazar v. Kaiser*, No. 1:25-  
10 CV-01017-JLT-SAB, 2025 WL 2456232, at \*10-11 (E.D. Cal. Aug. 26, 2025) (granting preliminary  
11 injunction and ordering ICE to stop detaining a petitioner who was released on her own recognizance  
12 after entering the United States without inspection); *Singh v. Andrews*, No. 1:25-CV-801, 2025 WL  
13 1918679, at \*10 (E.D. Cal. July 11, 2025) (same); *Hernandez v. Wofford*, No. 1:25-CV-00986-KES-  
14 CDB, 2025 WL 2420390, at \*4-6 (E.D. Cal. Aug. 21, 2025) (ordering temporary restraining order); *Doe*  
15 *v. Becerra*, 2025 WL 691664, at \*8.

16 Like Petitioner, individuals who have been granted parole possess a significant  
17 liberty interest in avoiding reincarceration. *Morrissey*, 408 U.S. at 482; *Saravia v. Sessions*, 280  
18 F.Supp.3d 1168, 1196–97 (N.D. Cal. 2017). Petitioner’s interest in being free from imprisonment is  
19 “the most significant liberty interest there is.” *Black v. Decker*, 103 F.4th 133, 151 (2d Cir. 2024).  
20 Numerous courts in this District have recognized a *Morrissey* liberty interest based upon facts  
21 similar to those presented here. See *Castellon v. Kaiser*, No. 1:25-CV-00968 JLT EPG, 2025 WL  
22 2373425, at \*8 (E.D. Cal. Aug. 14, 2025) (citing *Morrissey* for the proposition that an immigrant  
23 parolee possesses a protected liberty interest in her “continued liberty”); *Garcia v. Andrews*, No.  
24 2:25-cv-01884-TLN-SCR, 2025 WL 1927596, at \*3 (E.D. Cal. July 14, 2025) (recognizing a  
25 *Morrissey* liberty interest); *Singh v. Andrews*, 2025 WL 1918679, at \*6-7 (same).

26 Beyond the *Morrissey*-protected interest in his parole, Petitioner has a private liberty  
27 interest acknowledged in *Mathews*. Petitioner has spent nearly two years in ICE detention  
28 and will remain imprisoned without a hearing pending a final resolution of Respondent’s appeal

1 of the Order granting Petitioner asylum after the recent remand to the immigration court. This  
2 only heightens his liberty interest. Further, regardless of whether the IJ returns a favorable  
3 decision or an adverse one, Petitioner faces an indeterminate period of future confinement during  
4 any further appeals to the BIA and to the Ninth Circuit. *See Diouf v. Napolitano*, 634 F.3d 1081,  
5 1091–92 (9th Cir. 2011) (“When detention crosses the six-month threshold and release or  
6 removal is not imminent, the private interests at stake are profound.”); *Sho v. Current or Acting*  
7 *Field Off. Dir.*, No. 1:21-cv-01812 TLN AC, 2023 WL 4014649, at \*4 (E.D. Cal. June 15, 2023)  
8 (considering the “prospect of further extended detention” as part of the private interest).

9 Finally, the brutal conditions of Petitioner’s detention amplify Petitioner’s liberty interests.  
10 *Doe v. Becerra*, 732 F.Supp.3d 1071, 1089 (N.D. Cal. 2024) (“[H]arsh conditions multiply the  
11 burden on liberty for any given period.”). Notably, ***Respondent does not dispute that the***  
12 ***conditions at the GSA facility are inhumane and abusive.*** *See* Pet. ¶ 60 n. 1 & 2  
13 (elaborating on the facility’s inhumane conditions, including medical neglect, poor food quality,  
14 restricted access to running water, unsafe working conditions, and reports of physical assaults on  
15 detainees by officers).

16 Accordingly, this Court should find that Petitioner – having been granted parole upon entry  
17 into this Country – has a constitutional right to procedural due process to a bond hearing both  
18 because his parole was revoked and because his detention has become prolonged.

19 C. Due Process Requires that Petitioner Be Granted a Bond Hearing Under Either the  
20 *Mathews* Test or the *Lopez* Test

21 In his Petition, Petitioner demonstrated why all three of the *Mathews* factors support a  
22 finding that he should be granted a bond hearing. *See* Pet., ¶¶ 55-69. Respondent does not dispute  
23 that the *Mathews* factors – if applied by the Court – demonstrate Petitioner’s entitlement to a bond  
24 hearing.<sup>8</sup> *See* MTD at 7. Instead, Respondent argues that the Court should instead apply the three  
25 factors set forth in *Lopez v. Garland*, when deciding on Petitioner’s right to a bond hearing. *See*  
26 *id.* at 7-8.

27  
28 <sup>8</sup> Contrary to Respondent’s argument, the three *Mathews* factors should be used to determine  
whether Petitioner is entitled to a bond hearing. *See* Pet., ¶¶ 54-55 and Section B *supra*.

1 Respondent provides no rationale as to why the Court should apply the non-binding  
2 holding of a district court in *Lopez*, in lieu of the Supreme Court’s *Mathews* test. Indeed, the  
3 *Lopez* factors are less appropriate here because the detainee in *Lopez*, unlike Petitioner, was an  
4 aggravated felon detained pursuant to Section 1226(c). Compare Gallenkamp Decl. Ex. 1 at 2  
5 (“Immigration Violation(s): Negative;” “Criminal History: None;” “IDENT/IAFIS: Negative;”  
6 “CCDI/CIS/CLAIMS: Negative”) with *Lopez*, 631 F.Supp.3d at 873 (detainee convicted of three  
7 counts of second-degree robbery and sentenced to 17 years of prison). Nonetheless, even if the  
8 Court applies the *Lopez* factors, those factors weigh in favor of granting Petitioner a bond hearing.

9 1. Petitioner Has Not Caused Any Material Delay

10 The first *Lopez* factor considers the total length of detention to date. *Lopez*, 631 F.Supp.3d  
11 at 879. Of relevance here, the *Lopez* court recognized that many district courts have found  
12 detention of less than a year without a bond hearing to be unreasonable. See *id.* (collecting cases).  
13 Given that Petitioner has been detained for twice that amount of time, this factor clearly weighs in  
14 favor of granting a bond hearing.

15 Curiously, after insisting that the Court apply *Lopez* instead of *Mathews*, Respondent tells  
16 the Court that it should not actually apply the first *Lopez* factor. Mtn. at 8. Instead, Respondent  
17 demands that the Court consider the history of the removal litigation, including whether  
18 Petitioner’s detention was prolonged due to his decision to challenge the removal order. Mtn. at 8  
19 (citing *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1208 (9th Cir. 2022)).<sup>9</sup> However, this is not an  
20 instance where the Petitioner is responsible for the prolonged delay in this case. Unlike the  
21 detainees in the cases cited by Respondent, **Petitioner was granted asylum** and the **Respondent**  
22 **appealed** that ruling to the BIA. Compare Pet., ¶¶ 38-39 (Petitioner granted asylum and  
23 Respondent appealed) with Mtn. at 9 (citing *Mendez-Barocio v. Valinken*, No. 1:19-cv-01319-  
24 SKO (HC), 2020 WL 13556375, at \*2-3 (E.D. Cal. Feb. 3, 2020)(detainee petitioned Ninth Circuit  
25 for review); *Guangzu Zheng v. Decker*, No. 14-cv-4663(MHD), 2014 WL 7190993, at \*13

26  
27  
28 <sup>9</sup> Again, in *Rodriguez Diaz*, 53 F.4th at 1211, the petitioner had already been afforded a bond hearing, which is not the situation here.

1 (S.D.N.Y. Dec. 12, 2014)(detainee petitioned Circuit Court for review); *Prieto-Romero v. Clark*,  
2 534 F.3d 1053, 1065 (9th Cir. 2008) (detainee petitioned Ninth Circuit for review)).

3 The prolonged detention resulting from Respondent’s appeal is particularly egregious  
4 considering that Petitioner overcame a high likelihood that he would lose asylum in the first place.  
5 IJ Katie Mullins (who granted Petitioner’s asylum claim) has a less than a 2% asylum grant rate.  
6 *See* Declaration of Mario Valenzuela (“Valenzuela Decl.”) Ex. 1. Therefore, it is unlikely that  
7 Petitioner’s grant of asylum will ultimately be overturned on appeal.

8 But for the Government’s appeal, Petitioner would have already been released after fifteen  
9 months of detention. *See* Pet., ¶¶ 36-38. The BIA issued its ruling on that appeal on August 19,  
10 2025, and remanded the case back to the IJ to make further findings regarding Petitioner’s  
11 credibility and issue a new decision. *See* Valenzuela Decl. Ex. 2 at 3. Now, Petitioner faces  
12 detainment of uncertain duration as the appeal process – further lengthened by the remand  
13 proceedings – slowly grinds on. This *Lopez* factors weighs in favor of granting Petitioner a bond  
14 hearing.

15 2. The Length of Petitioner’s Detention is Indefinite

16 The second *Lopez* factor considers “*how long the detention is likely to last*,” an analysis  
17 that “all the other courts to consider this issue” agree should be the starting point. *Id.* at 881. As a  
18 result of the BIA’s recent remand, the Petitioner and Respondent have been asked by the IJ to brief  
19 two factual issues to be considered at a September 25, 2025 hearing: how should the court move  
20 forward procedurally, and whether the IJ needs to open the record. Valenzuela Decl. ¶ 4 & Ex. 3.  
21 Depending on the outcome of the IJ’s decision, Petitioner’s asylum claim might proceed for an  
22 indefinite amount of time before the IJ (after which it would face further delay by virtue of an  
23 appeal), or it might face another appeal of unknown duration. Regardless, there is no end in sight  
24 to Petitioner’s detention other than through a bond hearing.

25 3. Petitioner Should Not be Held Responsible for His Prolonged Detention  
26 Because He Requested Asylum and the Government Appealed His Grant of  
Asylum

27 For the final *Lopez* factor, courts consider the delays in the removal proceedings caused by  
28 the petitioner and the government. *Lopez*, 631 F.Supp.3d at 881. As noted in Section II.C.1, the

1 delay here was caused by the government, which exercised its right to appeal the IJ’s grant of  
2 asylum. That was its choice, but no fair blaming Petitioner for the government’s choice to drag  
3 out the process. And where, as here, the petitioner is not responsible for the delays in the  
4 conclusion of his removal proceedings, this factor weighs in favor of a bond hearing.<sup>10</sup> *See id.*  
5 (“Petitioner is entitled to raise legitimate defenses to removal ... and such challenges to his  
6 removal cannot undermine his claim that detention has become unreasonable.”).

7 D. The Government Will Bear the Burden of Proof By Clear and Convincing  
8 Evidence at Petitioner’s Bond Hearing

9 Respondent ends her pitch for denial of the Petition by recycling her prior argument that  
10 *Jennings* did not establish a right to a bond hearing. Mtn. at 11. Respondent misses the point  
11 once again. Petitioner does not claim he has a **statutory** right to a bond hearing (which was the  
12 issue presented in *Jennings*); he maintains that he has a **constitutional** right to a bond hearing for  
13 the reasons discussed in his Writ Petition and in Sections II.A-C above. *See also* Pet., ¶¶ 48-69.

14 In an implicit concession that Petitioner’s request for habeas relief should be granted,  
15 Respondent reminds the Court that it may only afford Petitioner a bond hearing, not release from  
16 detention. Mtn. at 11. Release is in fact an appropriate remedy where parole has been unlawfully  
17 revoked without individualized neutral review. *See Salazar*, 2025 WL 2456232, at \*10-11 (granting  
18 preliminary injunction and ordering ICE to stop detaining a petitioner who was released on her own  
19 recognizance after entering the United States without inspection); *Singh*, 2025 WL 1918679, at \*10  
20 (same).

21 Respondent spills a lot of ink discussing what burden of proof should be applied at a bond  
22 hearing. *See* Mtn. at 11-12. The issue is, in fact, very simple. The Ninth Circuit has squarely  
23 held that the government must bear the burden of proof by clear and convincing evidence at a first  
24 bond hearing. *Singh v. Holder*, 638 F.3d 1196, 1204 (9th Cir. 2011). The cases that Respondent  
25 cites for a contrary burden placement have nothing to do with bond hearings. *See* Mtn. at 12

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26 <sup>10</sup> Respondent suggests that this factor should weigh against a finding of unreasonable delay  
27 because Petitioner’s actions only “modestly delayed the litigation.” Mtn. at 10. Hence,  
28 Respondent effectively concedes that it is the Government’s appeal – which remains ongoing and  
of indefinite duration – that is primarily responsible for Petitioner’s prolonged detention.

1 (citing *Demore, Flores, Carlson, and Zadvydas*). And again, *Rodriguez Diaz* involved a petitioner  
2 seeking a subsequent bond hearing, not an initial bond hearing. *See* 53 F.4th at 1211. No case  
3 Respondent cites overrules the Ninth Circuit’s burden of proof allocation on the government at a  
4 first bond hearing as pronounced in *Singh v. Holder*.

5 **CONCLUSION**

6 For the above reasons, Petitioner respectfully requests that the Court:

- 7 1) deny Respondent’s Motion to Dismiss;
- 8 2) issue a Writ of Habeas Corpus and order Respondents, unless they elect to release  
9 Petitioner, to schedule a hearing before an Immigration Judge where:
- 10 a) to continue detention, the government must establish by clear and convincing  
11 evidence that Petitioner presents a risk of flight or danger, even after  
12 consideration of conditions of supervision; and
- 13 b) if the government cannot meet its burden, the Immigration Judge must order  
14 Petitioner’s release on appropriate conditions of supervision, taking into  
15 account Petitioner’s ability to pay a bond;
- 16 3) Issue a declaration that Petitioner’s ongoing prolonged detention violates the Due  
17 Process Clause of the Fifth Amendment; and
- 18 4) Award reasonable costs and attorney fees under the Equal Access to Justice Act, as  
19 amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified  
20 under law.

21  
22 Respectfully submitted on September 5, 2025,

23  
24 By: /s/ Monica M. Eno

Monica Mucchetti Eno

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