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UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

DALEY, ROBERT MARTIN,
A# [redacted],

Petitioner,

vs.

TONYA ANDREWS in her official capacity, Facility Administrator of Golden State Annex,

Respondent.

Case No. 1:25-cv-00922-CDB

FIRST AMENDED PETITION FOR WRIT OF HABEAS CORPUS

PETITION FOR WRIT OF HABEAS CORPUS

PURSUANT TO 28 U.S.C. § 2241

Petitioner Robert Martin Daley ("Mr. Daley") respectfully petitions this Honorable Court for a writ of habeas corpus to remedy Mr. Daley's unlawful detention by Respondent, as follows:

INTRODUCTION

1. Mr. Daley is currently detained by Immigration and Customs Enforcement ("ICE") at the Golden State Annex Detention Facility pending removal proceedings.

2. Mr. Daley has been detained in immigration custody for over twelve months, even though no neutral decisionmaker—whether a district judge or an immigration judge ("IJ")—has conducted a hearing to determine whether this lengthy incarceration is warranted based on danger or flight risk.

3. Mr. Daley's prolonged detention without a hearing on danger and flight risk violates the Due Process Clause of the Fifth Amendment.

4. Mr. Daley therefore respectfully requests that this Court issue a writ of habeas corpus, determine that Mr. Daley's detention is not justified because the government has not established by clear and convincing evidence that Mr. Daley presents a risk of flight or danger in light of available alternatives to detention, and order Mr. Daley's release, with appropriate conditions of supervision if necessary, taking into account Mr. Daley's ability to pay a bond. This Court may order a bond hearing directly. Federal courts, as "arbiters of constitutional rights," are empowered to hold bond hearings to decide whether a habeas petitioner's detention violates the Constitution. *See, e.g.*, Memorandum & Order, *L.G.M. v. LaRocco*, No. 25-cv-02631, slip op. at 6-7 (E.D.N.Y. June 25, 2025) (Dkt. 30) (citing *Mahdawi v. Trump*, 136 F.4th 443, 452 (2d Cir. 2025)) (granting habeas and ordering a bond hearing before the district court).

5. Alternatively, Mr. Daley requests that the Court issue a writ of habeas corpus and order Mr. Daley's release within 30 days unless Respondent schedules a hearing before an IJ where: (1) to continue detention, the government must establish by clear and convincing evidence that Mr. Daley presents a risk of flight or danger, after consideration of alternatives to detention that could mitigate any risk that Mr. Daley's release would present; and (2) if the government

cannot meet its burden, the IJ shall order Mr. Daley's release on appropriate conditions of supervision, taking into account Mr. Daley's ability to pay a bond.

JURISDICTION

6. Mr. Daley is detained in the custody of Respondent at Golden State Annex Detention Facility.

7. This action arises under the Due Process Clause of the Fifth Amendment of the U.S. Constitution. Jurisdiction is proper under 28 U.S.C. §§ 1331 (federal question), 2241 (habeas corpus); U.S. Const. art. I, § 2 (Suspension Clause); and 5 U.S.C. § 702 (Administrative Procedure Act). This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C.§ 1651.

8. Congress has preserved judicial review of challenges to prolonged immigration detention. *See Jennings v. Rodriguez*, 583 U.S. 281, 290-95 (2018) (holding that 8 U.S.C. §§ 1226(e), 1252(b)(9) do not bar review of challenges to prolonged immigration detention); *see also id.* at 355 (Breyer, J., dissenting) ("8 U.S.C. § 1252(b)(9) . . . by its terms applies only with respect to review of an order of removal") (citation modified).

VENUE

9. Venue is proper in this District because this is the district in which Mr. Daley is confined. *See Doe v. Garland,* 109 F.4th 1188, 1197-99 (9th Cir. 2024).

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 Respondent "forthwith," unless Mr. Daley is not entitled to relief. 28 U.S.C. § 2243. If the Court issues an OSC, it must require Respondent 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 affords "*a swift and imperative remedy* in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added);

see also Yong v. Immigr. & Naturalization Serv., 208 F.3d 1116, 1120 (9th Cir. 2000) (explaining that habeas statute requires expeditious determination of petitions).

PARTIES

12. Mr. Daley is a noncitizen currently detained by Respondent pending ongoing removal proceedings.

13. Respondent Tonya Andrews, Warden of the Golden State Annex Detention Facility, is Mr. Daley's immediate custodian at the facility where Mr. Daley is detained. *See Doe*, 109 F.4th at 1194-97.

STATEMENT OF FACTS

14. Mr. Daley was born in [redacted] on [redacted]. Neither he nor [redacted].

15. Mr. Daley first came to the United States in [redacted], when he was [redacted]

[redacted]

[redacted]

19. Mr. Daley's most recent entry to the United States was in [redacted]

[redacted]

20. [redacted] Mr. Daley has been seeking Asylum, Withholding of Removal, and Relief under the Convention Against Torture (collectively referred to hereinafter as the "asylum application") while in detention based on a well-founded fear of persecution and torture if he returns to [redacted]. However, he has had to do so while in custody, making it difficult for him to engage in timely communication with his counsel. To date, his asylum application remains pending.

21. Mr. Daley has not been provided a bond hearing before a neutral decision-maker to determine whether his prolonged detention is justified based on danger or flight risk. The IJ denied his request for a bond hearing in March 2025, citing the mandatory detention provision under 8 U.S.C. § 1225(b)(1)(B)(ii). Accordingly, the Immigration Court lacks jurisdiction and authority to provide Mr. Daley with a bond hearing to determine whether Mr. Daley's detention is justified. *See* 8 U.S.C. §§ 1225(b); 1226(c). There is no statutory or regulatory pathway for Mr. Daley to seek a bond hearing before a neutral decision-maker.

22. Absent intervention by this Court, Mr. Daley cannot and will not be provided with a bond hearing by a neutral decision-maker to assess the propriety of Mr. Daley's continued detention.

23. Mr. Daley is not a danger to the community or a flight risk. He has no pending criminal cases, and he [redacted]

[redacted]

connection with his claims in removal proceedings, demonstrating a willingness to engage with the legal process and further supporting the conclusion that Mr. Daley is not a flight risk.

24. Mr. Daley has deep and longstanding ties to the United States. [redacted]

25. If released, Mr. Daley would live with [redacted] If released, he would be able to [redacted]

26. Mr. Daley's detention has also [redacted]

27. Mr. Daley's detention has created significant obstacles to the preparation and presentation of his asylum application. These challenges have been compounded by repeated delays in attorney visitation at the detention facility. Despite multiple requests and diligent efforts by counsel, access to legal visitation has been routinely delayed, severely limiting counsel's ability to gather evidence and prepare Mr. Daley's case in a timely manner. In fact, on April 21, 2025, the

[1] [redacted]

IJ presiding over Mr. Daley's asylum application granted a continuance in Mr. Daley's favor necessitated by his counsel's inability to schedule a telephonic or virtual meeting with Mr. Daley ahead of his individual hearing.

28. ICE has not identified any exceptional circumstances warranting Mr. Daley's continued detention under ICE policy. Nor has ICE charged Mr. Daley as "specially dangerous" under 8 C.F.R. § 241.14.

29. Respondent's decision to detain Mr. Daley is no longer legally justifiable and is capricious and arbitrary. The Court should consider the merits of Mr. Daley's request for release.

LEGAL BACKGROUND

30. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see also id.* at 718 (Kennedy, J., dissenting) ("Liberty under the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention."). This fundamental due process protection applies to all noncitizens, including both "removable and inadmissible noncitizens." *See id.* at 721 ("[B]oth removable and inadmissible [noncitizens] are entitled to be free from detention that is arbitrary or capricious.").

31. Due process requires "adequate procedural protections" to ensure that the government's asserted justification for physical confinement "outweighs the 'individual's constitutionally protected interest in avoiding physical restraint.'" *Id.* at 690 (majority opinion) (citation omitted). In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention—to mitigate the risks of danger to the community and to prevent flight. *Id.*; *see also Demore*, 538 U.S. at 528.

32. Due process requires that the government provide bond hearings to noncitizens facing prolonged detention. "The Due Process Clause foresees eligibility for bail as part of 'due process'" because "[b]ail is basic to our system of law." *Jennings*, 583 U.S. at 330 (Breyer, J.,

dissenting). While the Supreme Court upheld the mandatory detention of a noncitizen under Section 1226(c) in *Demore*, it did so based on the petitioner's concession of deportability and the Court's understanding at the time that such detentions are typically "brief." *Demore*, 538 U.S. at 523, 528. Where a noncitizen has been detained for a prolonged period or is pursuing a substantial defense to removal or claim to relief, due process requires an individualized determination that such a significant deprivation of liberty is warranted. *Id.* at 532 (Kennedy, J., concurring) ("[I]ndividualized determination as to his risk of flight and dangerousness [may be warranted] if the continued detention became unreasonable or unjustified."); *see also Jackson v. Indiana*, 406 U.S. 715, 733-36 (1972) (holding that, in the context of pretrial detention on the basis of incompetency, detention beyond the "initial commitment" requires additional safeguards); *McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249-50 (1972) ("[L]esser safeguards may be appropriate [for] . . . short-term confinement."); *Hutto v. Finney*, 437 U.S. 678, 686 (1978) ("[T]he length of confinement cannot be ignored in deciding whether [a] confinement meets constitutional [Eighth Amendment] standards."); *Reid v. Donelan*, 17 F.4th 1, 7 (1st Cir. 2021) ("[T]he Due Process Clause imposes some form of 'reasonableness' limitation upon the duration of detention [under section 1226(c)]." (citation omitted)).

A. Detention that Exceeds Six Months Without a Bond Hearing Is Unconstitutional

33. Mr. Daley's detention is not "brief." *Demore*, 538 U.S. at 513. He has been detained in immigration custody for over twelve months. Detention without a bond hearing is unconstitutional when it exceeds six months. *See id.* at 529-30 (upholding only "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"); *Zadvydas*, 533 U.S. at 701 ("Congress previously doubted the constitutionality of detention for more than six months."); *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1091 (9th Cir. 2022) ("[O]nce the [noncitizen] has been detained for approximately six months, continuing detention becomes prolonged." (internal quotation marks omitted) (quoting *Diouf v. Napolitano*, 634 F.3d 1081, 1091 (9th Cir. 2011))); *Rodriguez v. Nielsen*, No. 18-CV-

04187-TSH, 2019 WL 7491555, at *6 (N.D. Cal. Jan. 7, 2019) ("[D]etention becomes prolonged after six months and entitles [the petitioner] to a bond hearing.").

34. The recognition that six months is a substantial period of confinement—and is the time after which additional process is required to support continued incarceration—is deeply rooted in our legal tradition. With few exceptions, "in the late 18th century in America crimes triable without a jury were for the most part punishable by no more than a six-month prison term." *Duncan v. Louisiana*, 391 U.S. 145, 161 (1968). Consistent with this tradition, the Supreme Court has found six months to be the limit of confinement for a criminal offense that a federal court may impose without the protection afforded by jury trial. *Cheff v. Schnackenberg*, 384 U.S. 373, 380 (1966) (plurality opinion). The Court has also looked to six months as a benchmark in other contexts involving civil detention. *See McNeil*, 407 U.S. at 249-52 (recognizing six months as an outer limit for confinement without individualized inquiry for civil commitment). The Court has likewise recognized the need for bright-line constitutional rules in other areas of law. *See Maryland v. Shatzer*, 559 U.S. 98, 110 (2010) (holding that 14 days must elapse following invocation of *Miranda* rights before re-interrogation is permitted); *Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 55-56 (1991) (holding that a probable cause hearing must take place within 48 hours of warrantless arrest).

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

35. Mr. Daley's detention, without *any* individualized review, is unreasonable under the *Mathews v. Eldridge* due process test. Alternatively, Mr. Daley prevails under the multi-factor reasonableness test adopted in *German Santos v. Warden Pike County Correctional Facility*, 965 F.3d 203, 211 (3d Cir. 2020).

36. Each year, thousands of noncitizens are incarcerated for lengthy periods pending the resolution of their removal proceedings. *See Jennings*, 583 U.S. at 328 (Breyer, J., dissenting) (observing that class members, numbering in the thousands, had been detained "on average one year" and some had been detained for several years). For noncitizens who have some criminal history, their immigration detention often dwarfs the time spent in criminal custody, if any. *See id.*

("[B]etween one-half and two-thirds of the class served [criminal] sentences less than six months.").

37. Mr. Daley faces severe hardships while detained by ICE. Mr. Daley is held in a locked-down facility, with limited freedom of movement and access to his family or support network: "[T]he circumstances of their detention are similar, so far as we can tell, to those in many prisons and jails." *Id.* at 861; *accord Chavez–Alvarez v. Warden York Cnty. Prison*, 783 F.3d 469, 478 (3d Cir. 2015); *Ngo v. INS*, 192 F.3d 390, 397-98 (3d Cir. 1999). "And in some cases the conditions of their confinement are inappropriately poor" including, for example, "invasive procedures, substandard care, and mistreatment, *e.g.*, indiscriminate strip searches, long waits for medical care and hygiene products, and, in the case of one detainee, a multiday lock down for sharing a cup of coffee with another detainee." *Jennings*, 583 U.S. at 329 (Breyer, J., dissenting) (citing Press Release, Off. of Inspector Gen., Dep't of Homeland Sec., *DHS OIG Inspection Cites Concerns with Detainee Treatment & Care at ICE Detention Facilities* (Dec. 14, 2017)); *see also* Tom Dreisbach, *Government's Own Experts Found 'Barbaric' & 'Negligent' Conditions in ICE Detention*, Nat'l Pub. Radio (Aug. 16, 2023, 5:01 AM) (reporting on the "'negligent' medical care (including mental health care), 'unsafe and filthy' conditions, racist abuse of detainees, inappropriate pepper-spraying of mentally ill detainees and other problems that, in some cases, contributed to detainee deaths"). Individuals at Golden State Annex Detention Facility have described receiving food contaminated with insects (including cockroaches, flies, and spiders), hair, and other foreign objects. *See* Cal. Collaborative for Immigrant Just., *Starving for Justice: The Denial of Proper Nutrition in Immigration Detention,* at 7 (April 2022), https://www.ccijustice.org/_files/ugd/733055_c43b1cbbdda341b894045940622a6dc3.pdf. At Mesa Verde Detention Facility, over 80% of detained individuals who responded to one survey said they had received expired food. *Id.*

38. The *Mathews* test for procedural due process claims balances: (1) the private interest threatened by governmental action; (2) the risk of erroneous deprivation of such interest and the value of additional or substitute safeguards; and (3) the government interest. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976); *see also Sho v. Current or Acting Field Off. Dir.*, No. 1:21-

cv-01812 TLN AC, 2023 WL 4014649, at *3 (E.D. Cal. June 15, 2023) (applying *Mathews* factors to a habeas petitioner's due process claims and collecting cases doing the same), *report and recommendation adopted*, 2023 WL 4109421 (June 21, 2023). Here, each factor weighs in Mr. Daley's favor, requiring this Court to hold a hearing promptly to evaluate whether the government can justify his ongoing detention.

39. *First*, Mr. Daley indisputably has a weighty interest in his liberty, the core private interest at stake here. *Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment . . . lies at the heart of the liberty [the Due Process Clause] protects."). Mr. Daley, who is being held in "incarceration-like conditions," has an overwhelming interest here, regardless of the length of his immigration detention, because "any length of detention implicates the same" fundamental rights. *Rajnish v. Jennings*, No. 3:20-cv-07819-WHO, 2020 WL 7626414, at *6 (N.D. Cal. Dec. 22, 2020).

40. *Second*, Mr. Daley will suffer the erroneous risk of deprivation of his liberty without an individualized evidentiary hearing. The risk of erroneous deprivation of his liberty is high, as he has been detained for over twelve months since June 28, 2024, without any evaluation of whether the government can justify detention under his individualized circumstances. "[T]he risk of an erroneous deprivation of liberty in the absence of a hearing before a neutral decisionmaker is substantial." *Diouf*, 634 F.3d at 1092. Conversely, "the probable value of additional procedural safeguards—a bond hearing—is high, because [the government] ha[s] provided virtually no procedural safeguards at all." *Jimenez v. Wolf*, No. 19-cv-07996-NC, 2020 WL 510347, at *3 (N.D. Cal. Jan. 30, 2020) (granting habeas petition for person who had been detained for one year without a bond hearing).

41. *Third*, the government's interest in continuing to detain Mr. Daley without providing any neutral review is very low. *See Mathews*, 424 U.S. at 335. The specific interest at stake here is not the government's ability to continue to detain Mr. Daley, but rather the government's ability to continue to detain him for months on end without any individualized review. *See Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 964 (N.D. Cal. 2019); *Henriquez v. Garland*, No. 5:22-cv-00869-EJD, 2022 WL 2132919, at *5 (N.D. Cal. June 14, 2022). The cost

of providing an individualized inquiry is minimal. *See Henriquez*, 2022 WL 2132919, at *5. The government has repeatedly conceded this fact. *See Lopez Reyes v. Bonnar*, 362 F. Supp. 3d 762, 777 (N.D. Cal. 2019); *Singh v. Barr*, 400 F. Supp. 3d 1005, 1021 (S.D. Cal. 2019); *Marroquin Ambriz*, 420 F. Supp. 3d at 964.

42. In sum, the *Mathews* factors establish that Mr. Daley is entitled to an evidentiary hearing before a neutral adjudicator. Unsurprisingly, courts applying these standards in this Circuit have repeatedly held that prolonged detention without a hearing before a neutral adjudicator violates procedural due process. *See, e.g.*, *Romero Romero v. Wolf*, No. 20-cv- 08031-TSH, 2021 WL 254435, at *2, *5 (N.D. Cal. Jan. 26, 2021) (granting habeas and holding that the petitioner's detention of just over one year without a custody hearing was "not compatible with due process"); *Jimenez*, 2020 WL 510347, at *1, *2, *4 (same for a petitioner detained just over one year without a custody hearing); *Gonzalez v. Bonnar*, No. 18-cv-05321-JSC, 2019 WL 330906, at *1, *5 (N.D. Cal. Jan. 25, 2019) (same); *see also Singh v. Garland*, No. 1:23-cv-01043-EPG-HC, 2023 WL 5836048, at *6 (E.D. Cal. Sept. 8, 2023); *Sho*, 2023 WL 4014649, at *4-5. This Court should so hold as well.

43. *Rodriguez Diaz* does not disturb this result. In *Rodriguez Diaz*, the Ninth Circuit applied the *Mathews* test to hold that the detention of a noncitizen detained under a different detention statute, 8 U.S.C. § 1226(a), did not violate procedural due process. 53 F.4th at 1213. Unlike Sections 1225(b) and 1226(c), Section 1226(a) mandates that detained individuals receive an individualized bond hearing at the outset of detention and provides for further bond hearings upon a material change in circumstances. *See* 8 C.F.R. § 1003.19(e). The panel's decision in *Rodriguez Diaz* was predicated on the immediate and ongoing availability of this administrative process under Section 1226(a). 53 F.4th at 1202 ("Section 1226(a) and its implementing regulations provide extensive procedural protections that are unavailable under other detention provisions."). Unlike the petitioner in *Rodriguez Diaz*, Mr. Daley has no statutory access to individualized review of his detention.

44. Alternatively, courts that apply a reasonableness test have considered the four non-exhaustive *German Santos* factors adopted by the Third Circuit in determining whether detention

is reasonable. The reasonableness inquiry is "highly fact-specific." *German Santos*, 965 F.3d at 210 (citation omitted). "The most important factor is the duration of detention." *Id.* at 211; *see also Gonzalez*, 2019 WL 330906, at *1, *5 (granting habeas and concluding that the petitioner's detention for just over one year without a custody hearing weighed strongly in favor of finding the detention unreasonable). Duration is evaluated along with "all the other circumstances," including (1) whether detention is likely to continue, (2) reasons for the delay, and (3) whether the conditions of confinement are meaningfully different from criminal punishment. *German Santos*, 965 F.3d at 211.

45. As noted, Mr. Daley has been detained for a substantial length of time, and Mr. Daley's detention is likely to continue as Mr. Daley asserts his right to seek immigration relief. *See supra* ¶ 20. Noncitizens should not be punished for pursuing "legitimate proceedings" to seek relief. *See Masood v. Barr*, No. 19-cv-07623-JD, 2020 WL 95633, at *3 (N.D. Cal. Jan. 8, 2020) ("[I]t ill suits the United States to suggest that [petitioner] could shorten his detention by giving up these rights and abandoning his asylum application."). Mr. Daley's confinement and experiences at a facility operated by a private, for-profit prison contractor demonstrate that his conditions of confinement are not meaningfully different from those of criminal punishment. *See supra* ¶¶ 26-27, 37.

C. The Government Must Justify Ongoing Detention by Clear and Convincing Evidence

46. At a bond hearing, due process requires certain minimum protections to ensure that a noncitizen's detention is warranted: the government must bear the burden of proof by clear and convincing evidence to justify continued detention, taking into consideration available alternatives to detention. And, if the government cannot meet its burden, the noncitizen's ability to pay a bond must be considered in determining the appropriate conditions of release.

47. To justify prolonged immigration detention, the government bears the burden of proof by clear and convincing evidence that the noncitizen is a danger or flight risk. *See Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011); *Aleman Gonzalez v. Barr*, 955 F.3d 762, 781 (9th Cir. 2020) ("*Jennings*'s rejection of layering [the clear and convincing burden of proof standard]

onto § 1226(a) as a matter of statutory construction cannot . . . undercut our constitutional due process holding in *Singh*."), *rev'd on other grounds by Garland v. Aleman Gonzalez*, 596 U.S. 543 (2022); *Sho*, 2023 WL 4014649, at *5 (applying *Singh* and holding that the government shall bear the burden in a constitutionally required bond hearing to remedy detention under a different statutory provision); *Singh*, 2023 WL 5836048, at *9 (same); *Pham v. Becerra*, No. 23-cv-01288-CRB, 2023 WL 2744397, at *7 (N.D. Cal. Mar. 31, 2023) (same); *Hernandez Gomez v. Becerra*, No. 23-cv- 01330-WHO, 2023 WL 2802230, at *4-5 (N.D. Cal. Apr. 4, 2023) (same); *I.E.S. v. Becerra*, No. 23-cv-03783-BLF, 2023 WL 6317617, at *10 (N.D. Cal. Sept. 27, 2023) (same); *Grewal v. Becerra*, No. 23-cv-03621-JCS, 2023 WL 6519272, at *8 (N.D. Cal. Oct. 4, 2023) (same); *Gomez v. Becerra*, No. 23-cv-03724-JCS, 2023 WL 6232236, at *9 (N.D. Cal. Sept. 25, 2023) (same); *Henriquez v. Garland*, No. 23-cv-01025-AMO, 2023 WL 6226374, at *4 (N.D. Cal. Sept. 25, 2023) (same); *Rodriguez Picazo v. Garland*, No. 23-cv-02529-AMO, 2023 WL 5352897, at *7 (N.D. Cal. Aug. 21, 2023) (same).

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

49. The requirement that the government bear the burden of proof by clear and convincing evidence is also supported by application of the three-factor balancing test from *Mathews*, 424 U.S. at 335. First, "an individual's private interest in 'freedom from prolonged detention' is 'unquestionably substantial.'" *See Rodriguez Diaz*, 53 F.4th at 1207 (quoting *Singh*, 638 F.3d at 1208). Second, the risk of error is great where the government is represented by trained attorneys and detained noncitizens are often unrepresented and may lack English proficiency. *See Santosky v. Kramer*, 455 U.S. 745, 762-63 (1982) (requiring clear and convincing evidence at

parental termination proceedings because "numerous factors combine to magnify the risk of erroneous factfinding" including that "parents subject to termination proceedings are often poor, uneducated, or members of minority groups" and "[t]he State's attorney usually will be expert on the issues contested"). Moreover, detained noncitizens are incarcerated in prison-like conditions that severely hamper their ability to obtain legal assistance, gather evidence, and prepare for a bond hearing. *See supra* ¶ 27. Third, placing the burden on the government imposes minimal cost or inconvenience to it, as the government has access to the noncitizen's immigration records and other information that it can use to make its case for continued detention.

D. Due Process Requires Consideration of Alternatives to Detention

50. Due process also requires consideration of alternatives to detention. The primary purpose of immigration detention is to ensure a noncitizen's appearance during civil removal proceedings. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related to this purpose if there are alternative conditions of release that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538-39 (1979) (finding that civil pretrial detention may be unconstitutionally punitive if it is excessive in relation to its legitimate purpose). ICE's alternatives to detention program—the Intensive Supervision Appearance Program ("ISAP")—has achieved extraordinary success in ensuring appearance at removal proceedings, reaching compliance rates close to 100 percent. *Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017) (observing that ISAP "resulted in a 99% attendance rate at all EOIR hearings and a 95% attendance rate at final hearings"). Thus, alternatives to detention must be considered in determining whether prolonged incarceration is warranted.

51. Due process likewise requires consideration of a noncitizen's ability to pay a bond. "Detention of an indigent 'for inability to post money bail' is impermissible if the individual's 'appearance at trial could reasonably be assured by one of the alternate forms of release.'" *Hernandez*, 872 F.3d at 990 (quoting *Pugh v. Rainwater*, 572 F.2d 1053, 1058 (5th Cir. 1978) (en banc)). Therefore, when determining the appropriate conditions of release for people detained for immigration purposes, due process requires "consideration of financial circumstances and alternative conditions of release." *Id.* at 991; *see also Martinez v. Clark*, 124 F.4th 775, 786 (9th

Cir. 2024) ("While the government had a legitimate interest in protecting the public and ensuring appearances in immigration proceedings, we held that detaining an indigent alien without consideration of financial circumstances and alternative release conditions was 'unlikely to result' in a bond determination 'reasonably related to the government's legitimate interests.'" (citation omitted)).

CLAIM FOR RELIEF

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION

52. Mr. Daley re-alleges and incorporates by reference the paragraphs above.

53. 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.

54. To justify Mr. Daley's ongoing prolonged detention, due process requires that the government establish, at an individualized hearing before a neutral decisionmaker, that Mr. Daley's detention is justified by clear and convincing evidence of flight risk or danger, taking into account whether alternatives to detention could sufficiently mitigate that risk.

55. For these reasons, Mr. Daley's ongoing prolonged detention without a hearing violates due process.

PRAYER FOR RELIEF

WHEREFORE, Mr. Daley respectfully requests that this Court:

1) Assume jurisdiction over this matter;

2) Issue a Writ of Habeas Corpus, hold a hearing before this Court if warranted, determine that Mr. Daley's detention is not justified because the government has not established by clear and convincing evidence that Mr. Daley presents a risk of flight or danger in light of available alternatives to detention, and order Mr. Daley's release (with appropriate conditions of supervision if necessary), taking into account Mr. Daley's ability to pay a bond;

3) In the alternative, issue a Writ of Habeas Corpus and order Mr. Daley's release within 30 days unless Respondent schedules a hearing before an IJ where: (1) to

continue detention, the government must establish by clear and convincing evidence that Mr. Daley presents a risk of flight or danger, even after consideration of alternatives to detention that could mitigate any risk that Mr. Daley's release would present; and (2) if the government cannot meet its burden, the IJ must order Mr. Daley's release on appropriate conditions of supervision, taking into account Mr. Daley's ability to pay a bond;

4) Issue a declaration that Mr. Daley's ongoing prolonged detention violates the Due Process Clause of the Fifth Amendment;

5) Award Mr. Daley his costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412; and

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

DATED: August 12, 2025

MUNGER, TOLLES & OLSON LLP

By: */s/ Miriam Kim*
Miriam Kim
Pro Bono Counsel for Petitioner

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

I am submitting this verification on behalf of the Petitioner because I am the attorney for Petitioner. I have discussed with the Petitioner the events described in this Petition. Based on those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

DATED: August 12, 2025

Respectfully submitted,

/s/ *Jin Niu* (as authorized on August 12, 2025)
Jin Niu
Pro Bono Counsel for Petitioner

CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this Petition for Writ of Habeas Corpus and all attachments using the CM/ECF system. I will furthermore mail a copy by USPS Certified Priority Mail with Return Receipts to each of the following individuals:

Tonya Andrews, Warden
Golden State Annex
611 Frontage Road
McFarland, CA 93250

DATED: August 12, 2025

Respectfully submitted,

/s/ Miriam Kim
Miriam Kim
Pro Bono Counsel for Petitioner