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9
10 **UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

11 Jose Natividad FLORES JIMENEZ,

(A )

Petitioner,

13 vs.

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

19 Respondents.
20

Case No.

**PETITION FOR WRIT OF HABEAS
CORPUS PURSUANT TO
28 U.S.C. § 2241**

IMMIGRATION HABEAS CASE

Petitioner Jose Natividad Flores Jimenez respectfully petitions this Honorable Court for a writ of habeas corpus to remedy his unlawful detention by Respondents, as follows:

INTRODUCTION

1. Mr. Flores Jimenez is currently detained by Immigration and Customs Enforcement (“ICE”) at the Golden State Annex (“GSA”) detention center pending adjudication of his Ninth Circuit Petition for Review (“PFR”).

2. Mr. Flores Jimenez has been detained in immigration custody since November 17, 2022, totaling over 33 months in immigration detention. No neutral decisionmaker—whether a federal judge or immigration judge (“IJ”)—has conducted a hearing to determine whether this lengthy incarceration is warranted based on danger or flight risk since June 13, 2023, over 26 months ago. Since that time, Mr. Flores Jimenez has shown staunch dedication to his sobriety and continued care of his mental illnesses.

3. Mr. Flores Jimenez’s prolonged detention violates the Due Process Clause of the Fifth Amendment. His detention for 33 months in conditions equal to or worse than criminal custody violates his substantive due process rights, and he respectfully requests that this Court issue a writ of habeas corpus ordering his immediate release.

4. If this Courts finds no violation of Mr. Flores Jimenez’s substantive due process rights, Mr. Flores Jimenez’s continued detention without an individualized determination of whether he presents a risk of flight or danger still violates his procedural due process rights under the Fifth Amendment. He therefore requests that this Court hold an evidentiary hearing where the government must establish by clear and convincing evidence that he currently presents such a risk, even after consideration of alternatives to detention that could mitigate this risk. If the government cannot meet its burden, this Court should order Mr. Flores Jimenez’s release on bail, under appropriate conditions of supervision, and taking into consideration his ability to pay the bail amount.

5. Mr. Flores Jimenez alternatively requests that this Court order his release within 30 days unless Respondents schedule a bond hearing before an IJ where DHS has the same burden of proving risk of flight or danger to justify Mr. Flores Jimenez’s continued detention.

JURISDICTION

6. Mr. Flores Jimenez is detained in Respondents' custody at GSA detention center.

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*, to 138 S. Ct. 830, 839-841 (2018) (holding that 8 U.S.C. §§ 1226(e) and 1252(b)(9) do not bar review of challenges to prolonged immigration detention); *see also id.* at 876 (Breyer, J., dissenting). ("8 U.S.C. § 1252(b)(9) . . . by its terms applies only with respect to review of an order of removal") (internal quotation marks and brackets omitted).

VENUE

9. Venue is proper in this District because this is the district in which Petitioner is confined. *See Doe v. Garland*, 109 F.4th 1188, 1197-99 (9th Cir. 2024). Mr. Flores Jimenez is currently detained in Kern County, placing his case with the Eastern District court sitting in Fresno, California in accordance with Local Rule 120(d).

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 Mr. Flores Jimenez is not entitled to relief. 28 U.S.C. § 2243. If the Court issues an OSC, it must require Respondents to file a return "within *three days* unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).

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. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (explaining that habeas

1 statute requires expeditious determination of petitions).

2 EXHAUSTION

3 12. Mr. Flores Jimenez is not required to exhaust administrative remedies. Exhaustion for
4 habeas claims is prudential, not jurisdictional. *See Laing v. Ashcroft*, 370 F.3d 994, 997 (9th
5 Cir. 2004); *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). Even prudential
6 exhaustion is not required if “administrative remedies are inadequate or not efficacious, pursuit
7 of administrative remedies would be a futile gesture, [or] irreparable injury will result.” *Laing*,
8 370 F.3d at 1000 (internal citation omitted); *see also Hernandez*, 872 F.3d at 988.

9 13. Section 1226(c) prohibits immigration courts from conducting individualized custody
10 hearings for those who are subject to detention under that provision. *See Jennings*, 138 S. Ct. at
11 847 (holding that Section 1226(c) mandates detention without a bond hearing until the
12 conclusion of removal proceedings). Furthermore, requiring Mr. Flores Jimenez to exhaust his
13 constitutional claims would be futile where these claims do not arise from the Immigration and
14 Nationality Act (“INA”), and therefore immigration courts and the Board of Immigration
15 Appeals (“BIA”) do not have the authority to review them. *See Wang v. Reno*, 81 F.3d 808,
16 815–16 (9th Cir. 1996) (per curiam) (“[T]he inability of the INS to adjudicate the constitutional
17 claim completely undermines most, if not all, of the purposes underlying exhaustion.”).

18 14. Requiring exhaustion at the immigration court and BIA would also cause Mr. Flores
19 Jimenez irreparable harm in the form of additional detention and continued separation from his
20 parents, siblings, nephews, and numerous family members who await Mr. Flores Jimenez’s
21 return home. *See Cortez v. Sessions*, 318 F. Supp. 3d 1134, 1139 (N.D. Cal. 2018) (habeas
22 petitioner “suffers potentially irreparable harm every day that he remains in custody without a
23 hearing, which could ultimately result in his release from detention” (internal citation omitted)).
24 Therefore, exhaustion is not required.

25 PARTIES

26 15. Petitioner is a noncitizen currently detained by Respondents pending ongoing removal
27 proceedings.

28 16. Respondent Tonya Andrews is the Facility Administrator of the Golden State Annex

detention facility, and she is responsible for the physical custody of Petitioner.

17. Respondent Polly Kaiser is the acting director of the regional ICE Field Office an agency of the United States responsible for the administration of the immigration laws. 8 U.S.C. § 1103(a). She is legal custodian of Petitioner. She is named in her official capacity.

18. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (“DHS”). She is responsible for overseeing DHS and its sub-agency, ICE, and has ultimate responsibility for the detention of noncitizens in civil immigration custody. Respondent Noem is a legal custodian of Petitioner. She is named in her official capacity.

19. Respondent Todd Lyons is the Acting Director for ICE. Respondent Lechleitner is responsible for ICE’s policies, practices, and procedures, including those relating to the detention of immigrants. He is named in his official capacity.

20. Respondent Pamela J. Bondi is the Attorney General of the United States and the head of the Department of Justice (“DOJ”), which encompasses the BIA and immigration judges as part of its sub-agency, the Executive Office for Immigration Review (“EOIR”). Respondent Bondi has the authority to interpret the immigration laws and adjudicate removal cases and bond hearings. *See* 8 U.S.C. § 1103(g). She has delegated that power to the nation’s immigration judges and the BIA. Respondent Bondi is a legal custodian of Petitioner. She is sued in her official capacity.

STATEMENT OF FACTS

21. Mr. Flores Jimenez is a twenty-nine-year-old Mexican national who has lived in the United States since 1999, when he moved here as a lawful permanent resident (“LPR”) with his family at only four years old. *See* Exh. A (Flores Jimenez Decl.), ¶ 3. His entire extended family lives in the United States and are themselves LPRs or U.S. citizens. *Id.* Mr. Flores Jimenez has spent the majority of his life in the United States. *Id.* ¶¶ 3–4. He describes his Spanish as “not very good” and is unable to read or write in the language. *Id.*

I. Mr. Flores Jimenez’s Turbulent Childhood

22. Growing up in Lodi, California, Mr. Flores Jimenez was often left home alone as his parents struggled to make ends meet. *Id.* ¶¶ 3, 5. From a young age, Mr. Flores Jimenez dealt

1 with an undiagnosed learning disability and mental illness. *Id.* ¶¶ 3, 6. Not knowing how to ask
2 for help, Mr. Flores Jimenez turned towards substances to manage his symptoms when he was
3 only 11 years old. *Id.* ¶ 6. In 2013, Mr. Flores Jimenez's cousin, Ronald, died unexpectedly.
4 *Id.* ¶ 8. Ronald's death deeply affected Mr. Flores Jimenez who thought of Ronald as a brother.
5 *Id.* Never receiving closure as to whether Ronald committed suicide or not, Mr. Flores Jimenez
6 fell into a deep depression and struggled to cope. *Id.* Ronald's death still haunts Mr. Flores
7 Jimenez to this day. *Id.*

8 23. In March 2019, Mr. Flores Jimenez experienced another traumatic event when the house
9 where he had been living with his parents and sister burned down. *Id.* ¶ 10. This coincided with
10 Mr. Flores Jimenez's sharp decline in mental health, and he was soon homeless and
11 experiencing vivid auditory and visual hallucinations. *Id.* Mr. Flores Jimenez's mental illness
12 and the substances he used to cope with his mental illness led to increased interactions with law
13 enforcement. *See id.* ¶ 11. It was only during Mr. Flores Jimenez's last incarceration in state
14 custody that he was finally diagnosed with several mental illnesses and an intellectual disability.
15 *Id.* ¶ 17. Since his diagnoses, Mr. Flores Jimenez has been medicated for the first time in his life
16 and feels mentally stronger and clearer than he has in years. *Id.* ¶ 23. Mr. Flores Jimenez has
17 now been sober for over three years and is dedicated to maintaining his sobriety to serve as a
18 role model for his young nephews. *Id.* ¶ 24, ¶ 42.

19 II. Mr. Flores Jimenez's Convictions

20 24. Mr. Flores Jimenez's interactions with law enforcement all occurred prior to his receiving
21 diagnoses and treatment for his multiple mental illnesses and intellectual disability. He
22 struggles to remember the details of these interactions and the exact number of times he has
23 been arrested for or convicted of a crime. *Id.* ¶ 16.

24 25. When he was 20 years old, Mr. Flores Jimenez was in a relationship with an older
25 woman. *Id.* ¶ 12. Both Mr. Flores Jimenez and his partner struggled with substance abuse, and
26 their relationship deteriorated. *Id.* On November 13, 2017, Mr. Flores Jimenez and his partner
27 got into a public argument after a night of heavy drinking. *Id.* As they were walking home, a
28 man Mr. Flores Jimenez did not know attempted to block their path. *Id.* Without thinking, Mr.

1 Flores Jimenez picked up a rock from the ground and threw it at the stranger. *Id.* While the
2 rock did not hit the stranger, Mr. Flores Jimenez received 90 days in jail for his actions. *Id.*

3 26. On February 06, 2018, Mr. Flores Jimenez and his partner once again entered into an
4 argument while intoxicated. *Id.* ¶ 13. The argument escalated, and while Mr. Flores Jimenez
5 does not recall details of the incident, his partner ended up with a scrape on her right arm. *Id.*
6 Mr. Flores Jimenez was convicted of inflicting corporal punishment on his partner and violating
7 a protective order.

8 27. On August 9, 2020, Mr. Flores Jimenez tried to steal two cases of beer from a local
9 convenience store. *Id.* ¶ 14. During this period of his life, Mr. Flores Jimenez was in active
10 addiction and homeless. *Id.* He had been experiencing an increase in paranoia and auditory
11 hallucinations for months. *Id.* ¶ 14. At the time, drinking felt like the only thing that could help
12 manage the voices. *Id.* When Mr. Flores Jimenez attempted to exit the store without paying for
13 the beer, he was surrounded by three store employees. Becoming confused and disoriented by
14 the several men encircling him, Mr. Flores Jimenez picked up a boxcutter that had fallen to the
15 ground, but at no point did he threaten them with the knife or try to hurt anyone. *Id.* As Mr.
16 Flores Jimenez tried to leave through the main entrance, he was tackled to the ground. *Id.* Mr.
17 Flores Jimenez was ultimately convicted of attempted robbery.

18 28. Around a year later, as Mr. Flores Jimenez's mental health continued to decline, he was
19 convicted of a second-degree auto burglary he committed on October 3, 2021. *Id.* ¶ 15. While
20 living on the streets, Mr. Flores Jimenez noticed what he thought was an abandoned van. *Id.*
21 One night, he encountered a man named Andrew who told him that the van would be easy to
22 break into. *Id.* After following Andrew to the car and breaking the van window, Mr. Flores
23 Jimenez realized his actions were wrong and started to walk away from the car. *Id.* However,
24 the police had already been called, and Mr. Flores Jimenez was arrested and spent two years in
25 jail for auto burglary. *Id.*

26 29. It was only after this last conviction and while he was in state custody, that Mr. Flores
27 Jimenez was ultimately diagnosed with a host of mental illnesses and an intellectual disability.
28 *Id.* ¶ 16. Now that he is on medication for the first time in his life, Mr. Flores Jimenez feels

1 profound regret and shame over his prior actions. *Id.* This newfound clarity has motivated Mr.
2 Flores Jimenez to remain committed to his sobriety. *Id.*

3 **III. Mr. Flores Jimenez's Two Years in Criminal Custody and Mental Health**

4 **Diagnosis**

5 30. While in criminal custody for his auto burglary conviction, Mr. Flores Jimenez
6 underwent a series of severe mental health episodes. *Id.* ¶¶ 18–21. By December 2021, Mr.
7 Flores Jimenez had attempted to take his own life on two separate occasions. *Id.* During his
8 first attempt, Mr. Flores Jimenez ingested 3 to 4 packets of Dawn Mist Shampoo and proceeded
9 to slam his head against the wall of his cell so violently that he had to be restrained and was
10 ultimately taken to the emergency room. *Id.* ¶ 19. During his second attempt, Mr. Flores
11 Jimenez became convinced that the voices he was hearing were coming from his throat, and in a
12 desperate bid to silence these voices, stabbed himself in the neck with a pencil. *Id.* ¶ 20. It was
13 only after these two incidents that Mr. Flores Jimenez was diagnosed [REDACTED]

14 [REDACTED]
15 [REDACTED]
16 [REDACTED] and placed on medication. *Id.* ¶ 21; Exh. I at 7–8.

17 31. Since being placed on medication, Mr. Flores Jimenez has taken on a new lease on life.
18 *Id.* ¶ 21. He feels motivated to do everyday tasks, like eat and read, that he previously found
19 overwhelming. *Id.* In addition to his medication, Mr. Flores Jimenez found new healthy coping
20 mechanisms, such as working out and staying connected to his family, to help manage
21 symptoms of his mental illness. *Id.* ¶ 27, ¶ 32.

22 **IV. Mr. Flores Jimenez's 33 Months in ICE Detention**

23 32. After completing his criminal sentence for the auto burglary, which had occurred two
24 years earlier, Mr. Flores Jimenez was transferred into immigration custody and taken to GSA on
25 November 17, 2022. Exh. B at 1.

26 33. During his 33 months of detention at GSA, Mr. Flores Jimenez has experienced subpar
27 mental health care and deteriorating conditions caused by recent overcrowding. This has led to
28 conditions that are equally or more punitive than what he experienced in criminal custody. *Id.* ¶

¶ 23–37.

34. According to a 2025 report by the California Department of Justice, GSA’s “[m]ental health and medical staff did not engage in appropriate treatment planning or multidisciplinary treatment to address detainee needs.”¹ GSA’s lack of appropriate treatment planning included “inadequate medication management.”² Mr. Flores Jimenez has experienced the effects of this mismanagement, as GSA has failed to maintain a consistent medication distribution schedule, resulting in Mr. Flores Jimenez missing about three to five dosages a month. *Id.* ¶ 26. Mr. Flores Jimenez keenly feels the effects of these missed dosages, reporting that when he does not take his medication regularly it becomes difficult for him to sleep, and he notices an increase in his anxiety. *Id.* This mental health care is starkly in contrast to that which he had access to in criminal custody, where not only would he receive his medication timely, but a social worker would check in on him regularly. *Id.* ¶ 27, ¶ 32. At GSA, Mr. Flores Jimenez feels belittled by medical staff in a way he never felt in prison. *Id.* ¶ 37. Recently, Mr. Flores Jimenez reported to medical staff at GSA that he is once again beginning to hear voices and requested additional medication to address this issue. *Id.* To date, medical staff at GSA has taken no action. *Id.*

35. In prison, Mr. Flores Jimenez regularly attended church services. However, at GSA detainees must be escorted to services, and services are not held as often. *Id.* ¶ 32. Mr. Flores Jimenez also used to attend Alcoholics Anonymous regularly at GSA. *Id.* ¶ 28. Since January 2025, the detention center has changed programming schedules, and programming has become harder to access due to an increase in new detainees. *Id.* ¶ 28.

36. With fewer mental health resources available to him, Mr. Flores Jimenez has used physical exercise as a coping tool to help manage his mental illness. *See id.* ¶ 28. Yard time is crucial to Mr. Flores Jimenez’s mental health. *Id.* While in prison, Mr. Flores Jimenez had access to greater amounts of yard time and exercise equipment. *Id.* ¶ 30. However, yard time at GSA has become increasingly restrictive, with workout equipment being removed from the

¹ CAL. DEP’T OF JUSTICE, IMMIGRATION DETENTION IN CALIFORNIA: A COMPREHENSIVE REVIEW WITH A FOCUS ON MENTAL HEALTH 53, (2025), <https://oag.ca.gov/system/files/media/immigration-detention-2025.pdf>.

² *Id.*

space and overall yard time being reduced from four hours daily to three. *Id.* ¶ 29.

37. Mr. Flores Jimenez has also taken on employment while detained at GSA to create structure in his daily routine. *Id.* ¶ 31. Mr. Flores Jimenez works as janitorial staff cleaning the facility Monday through Friday, for only a dollar a day. *Id.* Mr. Flores Jimenez's sobriety is largely motivated by his desire to maintain a positive relationship with his family, with whom he attempts to have daily phone calls. *Id.* ¶ 33. In prison, Mr. Flores Jimenez had access to free phone calls, but in GSA he both must pay for phone calls and overcrowding makes phone access scarce. *Id.* Mr. Flores Jimenez's anxiety greatly increases when he is unable to have daily contact with his family. *Id.*

38. GSA serves food in small portions, and the food is often undercooked and inedible. *Id.* ¶ 34. Due to the increase in detainees at GSA, the staff have become stricter about food distribution, to the point that Mr. Flores Jimenez was once erroneously denied a meal. *Id.* Mr. Flores Jimenez is forced to rely on his commissary fund to avoid going hungry. *Id.* The commissary at GSA is often double the price for items than it was in prison. *Id.*

39. The overcrowding has also made GSA increasingly unclean and unhygienic. Mr. Flores Jimenez attributes his recent urinary tract infection ("UTI") to worsening conditions and lack of consistent access to hygiene products. *Id.* ¶ 35. Mr. Flores Jimenez often must wait three to four days to receive basic personal care products like shampoo, toilet paper, or a toothbrush. *Id.* Laundry access is also being delayed, while undergarments, such as socks, are not being replaced. *Id.* ¶ 36.

V. Mr. Flores Jimenez's Removal Proceedings

40. On November 17, 2022, the Department of Homeland Security ("DHS") issued Mr. Flores Jimenez a Notice to Appear ("NTA"), charging him as removable under Section 237(a)(2)(A)(iii) and 237(a)(2)(E)(1) of the INA. *See* Exh. B. On February 7, 2023, Mr. Flores Jimenez filed a *pro se* application for asylum, withholding of removal, and protection under the convention against torture ("CAT"). Exh. I at 3. On November 29, 2022, an IJ found Mr. Flores Jimenez subject to mandatory detention under INA 236(c).

41. On February 28, 2023, the IJ found Mr. Flores Jimenez incompetent to represent himself

1 and appointed a Qualified Representative (“QR”) pursuant to *Franco-Gonzalez v. Holder*, No.
2 CV-10-02211, 2014 WL 5475097 (C.D. Cal. Oct. 29, 2014). *See* Exh. I at 2. With the
3 assistance of his QR, Mr. Flores Jimenez filed an updated application for asylum, withholding of
4 removal, and CAT based on his fear of future torture by Mexican police, Mexican mental health
5 workers, and criminal actors. *Id.* at 3.

6 42. On June 13, 2023, Mr. Flores Jimenez had a bond hearing pursuant to *Franco-Gonzalez*,
7 No. CV-10-02211, 2014 WL 5475097. During this bond hearing, the IJ found that Mr. Flores
8 Jimenez was a danger to the community because she found him likely to relapse into substance
9 abuse. *See* Exh. F. The IJ did not address whether Mr. Flores Jimenez was a flight risk. *Id.*

10 43. Between late 2022 to 2023, over four separate merits hearings, the IJ heard testimony
11 from Mr. Flores Jimenez; his sister Nora; Dr. Rodriguez, an expert in clinical psychology; and
12 Dr. Duncan, a qualified expert in “Mexico’s mental health system and how mentally ill people
13 are treated within that system,” who opined it was “extremely likely” Mr. Flores Jimenez would
14 end up in a psychiatric facility or detention center where he will be tortured if removed. Exh. I
15 at 8–16.

16 44. On November 13, 2023, the IJ denied Mr. Flores Jimenez all forms of relief. *See*
17 *generally* Exh. G. Mr. Flores Jimenez timely appealed the decision, and on April 25, 2024, the
18 BIA remanded with instructions for the IJ to conduct a new analysis of Mr. Flores Jimenez’s
19 eligibility for asylum and withholding and to consider each of his mental health conditions and
20 their impact on his likelihood of future persecution and torture. Exh. H.

21 45. On September 9, 2024, almost a year after her first decision, the IJ again denied all of Mr.
22 Flores Jimenez’s claims. *See* Exh. I. She again found Mr. Flores Jimenez ineligible for asylum
23 and withholding and denied CAT relief by finding it not more likely than not that Mr. Flores
24 Jimenez would relapse into substance abuse and encounter the state and private actors he fears.
25 *Id.* Mr. Flores Jimenez timely appealed to the BIA. *See* Exh. J. On February 28, 2025, a
26 single-member panel for the BIA upheld the IJ’s second denial, concluding that the IJ “did not
27 commit legal or clear factual error in determining that the respondent failed to show that he will
28 more likely than not be tortured by or with the acquiescence of a public official of the Mexican

government.” *Id.* at 5.

46. Mr. Flores Jimenez appealed to the Ninth Circuit for a PFR on March 3, 2025. *See* Exh. K. On June 16, 2025, the Ninth Circuit granted Mr. Flores Jimenez’s motion to stay removal while his appeal is pending. *Id.* His appeal currently remains pending at the Ninth Circuit, with DHS’s responsive brief due September 19, 2025, and Mr. Flores Jimenez’s reply brief due October 10, 2025. *Id.* Once his PFR briefing is complete, the Ninth Circuit will set a date for oral argument in the case and thereafter issue a decision. Mr. Flores Jimenez’s PFR may remain pending for multiple months, if not longer, during which he will remain detained. A remand from the Ninth Circuit would further prolong Mr. Flores Jimenez’s detention as his case is adjudicated again.

VI. Mr. Flores Jimenez’s Release Plan

47. Mr. Flores Jimenez has a comprehensive release plan to ensure that he continues his sobriety and mental health care in a controlled environment. *See* Exh. T.

48. While detained, Mr. Flores Jimenez has remained sober from all alcohol and drugs for almost three years. *See* Exhs. A, T. Mr. Flores Jimenez has taken his time in detention to reflect on his past and now has a clear path to becoming the person he would like to be – a hard worker and family man. Flores Jimenez Decl., ¶ 38. Equipped with his mental health diagnosis and medication, Mr. Flores Jimenez has learned how to care for his depression and anxiety without turning towards substance abuse. *See id.* ¶ 39.

49. If released from GSA, Mr. Flores Jimenez plans to live with his parents in Lodi, California. *Id.* ¶ 41. Mr. Flores Jimenez’s parents are dedicated to helping him maintain sobriety in a highly structured environment and have already identified a nearby outpatient rehabilitation program for Mr. Flores Jimenez to enroll in once he is released. *See* Exh. M. Mr. Flores Jimenez also has the unwavering support of his siblings, who will aid with transportation to and from any medical appointments, and help him find employment in construction. *See* Exhs. N, O, Q. Mr. Flores Jimenez also has the support of his religious community, who await him with open arms. *See* Exhs. P, R.

50. Mr. Flores Jimenez has been screened by San Joaquin County Behavioral Health Services

1 (“SJCBHS”), which offers comprehensive substance use and mental health services. *See* Exh.
2 R. Once released, he will meet with a counselor who will conduct a thorough and individualized
3 assessment of Mr. Flores Jimenez’s needs and help enroll him in a structured treatment plan for
4 both his substance abuse and mental health. *See* Exh. T. In addition to joining a rehabilitation
5 program, Mr. Flores Jimenez will receive continued support through ImmDef’s case
6 management program, which has already identified local Alcoholics Anonymous meetings and
7 work reintegration programs from which he can benefit. *Id.*

8 51. ICE has now civilly detained Mr. Flores Jimenez for more than 1,014 days and will
9 continue to detain him for at least months longer absent federal court intervention.

10 LEGAL FRAMEWORK

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

21 53. Due process requires “adequate procedural protections” to ensure that the government’s
22 asserted justification for physical confinement “outweighs the individual’s constitutionally
23 protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690 (internal quotation
24 marks omitted). In the immigration context, the Supreme Court has recognized only two valid
25 purposes for civil detention—to mitigate the risks of danger to the community and to prevent
26 flight. *Id.*; *Demore*, 538 U.S. at 528. The Supreme Court has found that civil immigration
27 detention is limited by both substantive and procedural due process protections. “In our society
28 liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.”

1 *United States v. Salerno*, 481 U.S. 739, 755 (1987).

2 54. Due process therefore requires that the government provide bond hearings to noncitizens
 3 facing prolonged detention. “The Due Process Clause foresees eligibility for bail as part of due
 4 process” because “[b]ail is basic to our system of law.” *Jennings*, 138 S. Ct. at 862 (Breyer, J.,
 5 dissenting) (internal quotation marks omitted). While the Supreme Court upheld the mandatory
 6 detention of a noncitizen under Section 1226(c) in *Demore*, it did so based on the petitioner’s
 7 concession of deportability and the Court’s understanding at the time that such detentions are
 8 typically “brief.” *Demore*, 538 U.S. at 522 n.6, 528. Where a noncitizen has been detained for a
 9 prolonged period or is pursuing a substantial defense to removal or claim to relief, due process
 10 requires an individualized determination that such a significant deprivation of liberty is
 11 warranted. *Id.* at 532 (Kennedy, J., concurring) (“[I]ndividualized determination as to his risk of
 12 flight and dangerousness” may be warranted “if the continued detention became unreasonable or
 13 unjustified”); *see also Jackson v. Indiana*, 406 U.S. 715, 733 (1972) (holding that detention
 14 beyond the “initial commitment” requires additional safeguards); *McNeil v. Dir., Patuxent Inst.*,
 15 407 U.S. 245, 249–50 (1972) (holding that “lesser safeguards may be appropriate” for “short
 16 term confinement”); *Hutto v. Finney*, 437 U.S. 678, 685–86 (1978) (holding that, in the Eighth
 17 Amendment context, “the length of confinement cannot be ignored in deciding whether [a]
 18 confinement meets constitutional standards”); *Reid v. Donelan*, 17 F.4th 1, 7 (1st Cir. 2021)
 19 (holding that “the Due Process Clause imposes some form of reasonableness limitation upon the
 20 duration of detention” under section 1226(c)) (internal quotation marks omitted).

21 **A. Immigration Detention Violates Substantive Due Process If It Is Excessive or**
 22 **Unnecessary in Relation to Its Purpose and Thus Punitive.**

23 55. Substantive “due process requires that the nature and duration of [civil incarceration] bear
 24 some reasonable relation to the purpose for which the individual is committed,” otherwise, it
 25 amounts to punishment. *Jones v. Blanas*, 393 F.3d 918, 931 (9th Cir. 2004) (quoting *Jackson*,
 26 406 U.S. at 738). Even when the Constitution permits some confinement, the Supreme Court
 27 has recognized that such confinement becomes punitive when it is “excessively prolonged.”
 28 *Salerno*, 481 U.S. at 747 n.4. Applying these principles, the Ninth Circuit has held that civil

restrictions on liberty violate due process: (1) “where [they] are expressly intended to punish,” or (2) “where the challenged restrictions serve an alternative, non-punitive purpose but are nonetheless ‘excessive in relation to the alternative purpose,’ or ‘are employed to achieve objectives that could be accomplished in so many alternative and less harsh methods.’” *Jones*, 393 F.3d at 932 (internal citations omitted). Civil detention is also presumptively punitive if the individual is held in conditions that are similar to, or more restrictive than, conditions in criminal custody. *See id.* at 934; *King v. Cty. of Los Angeles*, 885 F.3d 548, 556-57 (9th Cir. 2018). Accordingly, when a person who is subjected to prolonged civil immigration detention poses no risk of flight or danger to the community, or when restrictions short of physical custody are sufficient to mitigate any risk such person poses, the Constitution requires release from physical custody.

B. Even When It Is Not Punitive, Prolonged Detention Without an Individualized Hearing Violates Procedural Due Process.

56. When considering due process challenges, courts should first consider whether the government’s deprivation of liberty violates substantive due process. Only if the deprivation in that inquiry does not violate substantive due process does the court turn to the procedural due process claim. *See Zinermon v. Burch*, 494 U.S. 113, 126 (1990) (substantive due process challenges the deprivation itself, whereas procedural due process challenges only the process that accompanied it); *Huynh v. Reno*, 56 F. Supp. 2d 1160, 1162 n.3 (W.D. Wash. 1999) (“[O]nly when a restriction on liberty survives substantive due process scrutiny does the further question of whether the restriction is implemented in a procedurally fair manner become ripe for consideration.”) (citing *Salerno*, 481 U.S. at 746)).

57. If a noncitizen’s detention complies with substantive due process, prolonged immigration detention can still violate procedural due process absent an individualized inquiry of whether the government’s asserted justification for confinement “outweighs the ‘individual’s constitutionally protected interest in avoiding physical restraint.’” *Zadvydas*, 533 U.S. at 690 (citations omitted); *see also Sajous v. Decker*, No. 18-CV-2447 (AJN), 2018 WL 2357266, at *8 (S.D.N.Y. May 23, 2018) (“The Court’s first conclusion is essentially conceded by the Government: that prolonged

detention under § 1226(c) without providing an alien with a bond hearing will—at some point—violate the right to due process.”); *Abdul-Samed v. Warden of Golden State Annex Det. Facility*, No. 1:25-CV-00098-SAB-HC, 2025 WL 2099343, at *6 (E.D. Cal. July 25, 2025) (“[T]he Court finds that unreasonably prolonged mandatory immigration detention without an individualized bond hearing violates due process.”).

58. The Supreme Court and the Ninth Circuit have indicated that immigration detention exceeding six months is prolonged, and therefore presumptively unconstitutional without an individualized hearing. *See Zadvydas*, 533 U.S. at 701; *Diouf v. Napolitano (Diouf II)*, 634 F.3d 1081, 1091–92 (9th Cir. 2011) (holding that immigration “detention becomes prolonged” after six months), *abrogated on other grounds as stated in Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022).

59. Courts that have declined to apply the six-month bright-line rule have instead applied various multi-factor reasonableness tests to evaluate as-applied challenges to prolonged detention under Section 1226(c). *See German Santos v. Warden Pike Correctional Facility*, 965 F.3d 203, 211 (3d Cir. 2020), ; *see also Abdul-Samed*, No. 1:25-CV-00098-SAB-HC, 2025 WL 2099343, at *6 (collecting examples of the different multi-factor tests applied in this circuit). In *Lopez v. Garland*, 631 F. Supp. 3d 870 (E.D. Cal. 2022), the court evaluated whether the petitioner’s prolonged detention under 1226(c), without any individualized bond hearing, violated the petitioner’s procedural due process rights based on three factors: 1) total length of detention to date; 2) likely duration of future detention; and 3) reasons for delays in the immigration proceedings.

60. There are also some courts in this district that apply the long-standing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), balancing test when evaluating as-applied procedural due process challenges to Section 1226(c) detention. *See e.g., Carballo v. Andrews*, No. 1:25-CV-00978-KES-EPG (HC), 2025 WL 2381464, at *7 (E.D. Cal. Aug. 15, 2025) (applying *Mathews* because “[d]ue process ‘is a flexible concept that varies with the particular situation.’” (quoting *Zinermon*, 494 U.S. at 127); *Eliazar G.C. v. Wofford*, No. 1:24-CV-01032-EPG-HC, 2025 WL 711190, at *5 (E.D. Cal. Mar. 5, 2025) (“[T]he Ninth Circuit has ‘regularly applied *Mathews* to

1 due process challenges to removal proceedings,’ and finding ‘*Mathews* remains a flexible test
 2 that can and must account for the heightened governmental interest in the immigration detention
 3 context.’”) (quoting *Rodriguez Diaz*, 53 F.4th at 1193, 1206). The Supreme Court has likewise
 4 indicated that *Mathews* is the constitutional test for “evaluating the procedures in any case.”
 5 *Landon v. Plasencia*, 459 U.S. 21, 34 (1982) (remanding procedural due process challenge to
 6 administrative immigration procedures with instruction to apply *Mathews*).³

7 ARGUMENT

8 **I. Petitioner’s Continued Detention Violates the Substantive Due Process Clause** 9 **Because It Is Excessive in Relation to the Government’s Interests and Is** 10 **Therefore Punitive.**

11 61. Substantive due process prohibits detention that is punitive in purpose or in effect,
 12 including detention that is unreasonably prolonged. See *Jackson*, 406 U.S. at 738; *Salerno*, 481
 13 U.S. at 747, n.4. Civil immigration detention is constitutionally permissible only to the extent
 14 that it is reasonably related to the purpose of preventing danger to the community or flight risk.
 15 See *Demore*, 538 U.S. at 515; see also *Zadvydas*, 533 U.S. at 690.

16 62. Even civil detention that begins as constitutionally acceptable may become
 17 unconstitutionally punitive when it exceeds a particular duration. “[A]s the period of . . .
 18 confinement grows,” greater justification is needed “for detention to remain reasonable.”
 19 *Zadvydas*, 533 U.S. at 701; see also *id.* at 690 (“A statute permitting indefinite detention of [a
 20 noncitizen] would raise a serious constitutional problem”); *Salerno*, 481 U.S. at 747, n.4
 21 (recognizing there may be “[a]point at which detention in a particular case might become

22 ³ The Supreme Court’s decision in *Jennings v. Rodriguez* did not alter this constitutional
 23 analysis. While *Jennings* rejected the application of the constitutional avoidance canon to
 24 Sections 1226(c) and 1225(b), the Court found that “the Court of Appeals . . . had no occasion to
 25 consider [the] constitutional arguments on their merits,” and remanded the case for further
 26 development. 138 S. Ct. at 851. The Ninth Circuit, in turn, remanded *Jennings* to the district
 27 court, registering its “grave doubts that any statute that allows for arbitrary prolonged detention
 28 without any process is constitutional . . .” *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir.
 2018); see also *German Santos*, 965 F.3d at 210 (“[E]ven though the [*Jennings*] Court
 foreclosed reading the statutory text [of the detention statutes] as guaranteeing periodic bond
 hearings, it reserved the [noncitizens’] constitutional claims for remand. . . . We are thus bound
 by [our precedents] that § 1226(c) is unconstitutional when applied to a detainee [a] [noncitizen]
 unreasonably long without a bond hearing.”).

excessively prolonged, and therefore punitive, in relation to Congress' regulatory goal"); *Jackson*, 406 U.S. at 733 (expressing "substantial doubt" that statutes authorizing pretrial detention of incompetent criminal defendants "could survive constitutional scrutiny if interpreted to authorize indefinite commitment"); *McNeil*, 407 U.S. at 249-50 (upholding "short-term confinement with a limited purpose," however, "by the same token, the duration of the confinement must be strictly limited" to adhere to due process); *Schall v. Martin*, 467 U.S. 253, 269-70 (1984) (finding pre-trial detention of juveniles non-punitive because it was "strictly limited in time" and the maximum possible detention was 17 days).

63. Mr. Flores Jimenez's detention is "excessive in relation to [its non-punitive] purpose" because he does not pose a current risk of flight or danger to the community that can justify the 33 months he has spent, and continues to spend, in civil incarceration. *Jones*, 393 F.3d at 934 (internal citation omitted); see also *Salerno*, 481 U.S. at 747 (determining whether a restriction on liberty is punitive requires considering "whether it appears excessive in relation to the [non-punitive] purpose") (quoting *Schall*, 467 U.S. at 269).

64. While Mr. Flores Jimenez did receive a bond hearing towards the beginning of his immigration proceedings on June 13, 2023, it has been well over two years since his last bond hearing. See Exh. F. At this hearing, the IJ denied Mr. Flores Jimenez bond based on dangerousness due to his likelihood of relapse into substance abuse. *Id.* Mr. Flores Jimenez has now been sober for over three years, is dedicated to his recovery and mental health, and does not pose a danger to the community. See Exh. A, (Flores Jimenez Decl.) ¶ 24, ¶¶ 38-45. Even if the Court finds there is some risk to his monitored release, any risk can be sufficiently mitigated with "alternative and less harsh methods" than continued and indefinite physical detention. *Jones*, 393 F.3d at 934 (internal citation omitted). As found by the court in *Zadvydas*, when it comes to immigration custody "[t]he choice . . . is not between imprisonment and the alien 'living at large[.]' . . . [i]t is between imprisonment and supervision under release conditions that may not be violated." 533 U.S. at 696 (internal citations omitted).

A. Petitioner Does Not Pose a Flight Risk or Danger to the Community.

65. First, Mr. Flores Jimenez does not pose any flight risk. During his initial bond

determination in June 2023, the Government did not even put forth arguments that Mr. Flores Jimenez was a flight risk, and the IJ ultimately denied bond solely on dangerousness. *See* Exh. F. Mr. Flores Jimenez has resided in the United States since he was a toddler and has extensive family and community ties in California. *See* Exh. A, ¶ 3. His immediate family and numerous aunts, uncles, and cousins, all live in California. *Id.* The United States is the country Mr. Flores Jimenez was raised in and the only home he has ever known. *Id.* Mr. Flores Jimenez longs to be reunited with his family, with whom he is extremely close and with whom he attempts to have daily contact. *Id.* ¶ 32; ¶ 40. Before his incarceration, Mr. Flores Jimenez formed a deep bond with his young nephew, who has autism. *Id.* ¶ 42. Mr. Flores Jimenez longs to be released to aid in raising his two special needs nephews. *Id.*; *See* Exh. N; *Sales v. Johnson*, No. 16-CV-01745-EDL, 2017 WL 6855827, at *1, *5, *7 (N.D. Cal. Sept. 20, 2017) (holding that the government had failed to establish flight risk for a habeas petitioner who had significant family ties and a pending petition for review with the Ninth Circuit, and ordering release).

66. Mr. Flores Jimenez is dedicated to fighting his immigration case and currently has a PFR pending at the Ninth Circuit Court of Appeals. Recently, the Ninth Circuit granted Mr. Flores Jimenez's motion to stay his removal while his case is pending. *See Flores-Jimenez v. Bondi*, Dkt. 25. Studies show that 96% or 97% of non-detained immigrants with a lawyer attend all of their hearings, and alternatives to detention have "resulted in a 99% attendance rate at all EOIR hearings and a 95% attendance rate at final hearings."⁴

67. Moreover, if he is released, Mr. Flores Jimenez will be supported fully by his immediate and extended family, as well as by the rehabilitation programs and mental health services he intends to enroll in. *See* Exh. A, ¶ 43–45; Exh. T. As discussed at length in his declaration, letters of support, and release plan, Mr. Flores Jimenez will also have the support of his loved ones, especially his parents and siblings. *See id.*; Exhs. M–R (letters of support). If released, Mr. Flores Jimenez will participate in an outpatient rehabilitation program while living with his

⁴ *See* American Immigration Council, *Measuring In Absentia Removal in Immigration Court* (Jan. 2021), *available at* <https://www.americanimmigrationcouncil.org/report/measuring-absentia-removal-immigration-court/>.

1 parents in Lodi, California. *See* Exh. M; Exh. T. Mr. Flores Jimenez is dedicated to improving
2 his mental and physical health and serving as a mentor for his two young nephews. *See* Ex. A, ¶
3 42; *Doe v. Barr*, No. 20-cv-02141-LB, 2020 WL 1820667, at *11 (N.D. Cal. Apr. 12, 2020)
4 (holding that an individual posed a minimal risk of flight due to his “substantial ties to the
5 community” and “incentive to comply with the conditions of his supervision”).

6 68. **Second**, Mr. Flores Jimenez does not pose a danger to the community. He has remained
7 steadfast in his sobriety for three years and has a structured release plan to mitigate any risk of
8 relapse. Mr. Flores Jimenez plans to participate in an outpatient rehab program which will
9 provide him with numerous other mental health resources. *See* Exh A, ¶ 43; Exh. T. He will
10 also have support from his family’s religious community through St. Joachim Parish, and access
11 to regular bible study. *See* Exh. P; Exh. R. For all these reasons, Mr. Flores Jimenez does not
12 pose a present danger.

13 69. Mr. Flores Jimenez last had a bond hearing in June 2023. At that time, the IJ found that
14 Mr. Flores Jimenez was a danger to the community due to the span and recency of his criminal
15 convictions and likelihood of relapse. *See* Exh. F. While Mr. Flores Jimenez does have a
16 criminal history dating back to before he was ever diagnosed or treated for his mental illnesses
17 or intellectual disability, “committing [a] crime does not place [an immigration detainee] forever
18 beyond redemption.” *Ngo v. INS*, 192 F.3d 390, 398 (3d Cir. 1999).⁵ Since Mr. Flores
19 Jimenez’s last bond hearing was over two years ago, the recency of his criminal history has
20 increased in remoteness. *See Lopez Reyes v. Bonnar*, 362 F. Supp. 3d 762, 774 (N.D. Cal. 2019)
21 (finding that petitioner’s amount of time since his last arrest for DUI had “now doubled to 32
22 months” since his initial bond hearing); *see also Calderon-Rodriguez v. Wilcox*, 374 F. Supp. 3d
23

24 ⁵ At this point in time, Mr. Flores Jimenez’s detention has been so prolonged it exceeds any
25 time he has spent in criminal custody for the underlying crimes deeming him removable. *See* Ex
26 A, ¶ 15; Exh. I at 16; *see also Reynoso-Rodriguez v. Napolitano*, No. CIV S-08-321 MCEKJM,
27 2009 WL 3157477, at *7 (E.D. Cal. Sept. 28, 2009) (citing *Ngo*, 192 F.3d at 398) (finding *Ngo*’s
28 reasoning persuasive as to “[w]hen detention is prolonged, special care must be exercised so
that the confinement does not continue beyond the time when the original justifications for
custody are no longer tenable.”).

1024, 1027 (W.D. Wash. 2019) (finding that “[d]angerousness cannot be based on criminal history alone; the severity and recency of the criminal conduct must be taken into account. The IJ also must consider changes in circumstances that would make recidivism less likely.”).

70. Over the course of Mr. Flores Jimenez’s proceedings, the immigration court contradicts its own findings on whether he poses a danger due to relapse. During Mr. Flores Jimenez’s one and only full bond hearing, the IJ found it likely that he would not cease his drug and alcohol abuse, making him a danger to others. *See* Exh. F. But in her decision denying Mr. Flores Jimenez immigration relief under CAT, the IJ explicitly finds Mr. Flores Jimenez unlikely to relapse:

“And again, the Court reiterates: though Respondent has previously used mind and mood-altering substances as coping mechanisms in the past, he has been sober for an extended period of time, has been receiving treatment for depression, understands the negative consequences that come from using alcohol and illegal drugs to self-medicate, and is willing and eager to receive support and help from . . . his family and other services.” Exh. I at 43.

As referenced by the IJ, Mr. Flores Jimenez has been sober for three years and is dedicated to his continued sobriety in a structured environment with family support. *See* Ex. A, ¶ 24; ¶¶ 41–44; Exh. T. Thus, Mr. Flores Jimenez does not pose a danger to the community.

B. Alternatively, Petitioner’s 33 Months of Physical Custody, Under Conditions Equal or Worse to Criminal Custody, Is Punitive.

71. Even if Mr. Flores Jimenez poses some risk of flight or danger, the 33 months and counting he has spent in detention, under conditions equal or worse to criminal custody, is not proportional to that risk. Moreover, any such risk can be sufficiently mitigated by far less restrictive measures than continued physical custody. *See Perez v. Wolf*, 445 F. Supp. 3d 275, 291, 295 (N.D. Cal. 2020) (upholding IJ’s finding of dangerousness and nonetheless ordering release from immigration detention on conditions of release based on substantive due process claim); *see also infra* ¶¶ 82–84.

72. In the context of pre-trial detention in criminal proceedings, another form of civil custody, the Supreme Court in *Salerno* made clear that otherwise permissible detention violates

1 the Due Process Clause once it becomes prolonged in relation to its purpose. 481 U.S. at 747
2 n.4. The Ninth Circuit has likewise stated that, “at some point, regardless of the risks . . . due
3 process will require that [a person subject to prolonged civil confinement] be released.” *United*
4 *States v. Torres*, 995 F.3d 695, 709–10 (9th Cir. 2021) (noting that “all parties”—including the
5 federal government—conceded this point); *see also United States v. Briggs*, 697 F.3d 98, 103
6 (2d Cir. 2012) (“[F]or every set of circumstances, due process does impose some limit [on civil
7 confinement].”). Applying *Salerno*, the Ninth Circuit in *Torres* held that 21 months of pre-trial
8 detention “is approaching the limits of what due process can tolerate” for a defendant awaiting
9 trial who had multiple prior convictions including for violent offenses and a history of failing to
10 appear in court. 995 F.3d at 709-10. In *Torres*, the petitioner had already received *multiple*
11 individualized hearings to determine whether he posed a flight risk or danger to the community,
12 whereas Mr. Flores Natividad has only been provided with one opportunity to do so over his 33
13 months of confinement. *See Torres*, 995 F.3d at 700.

14 73. Multiple courts have declared unconstitutional periods of confinement far shorter than
15 Mr. Flores Jimenez’s 33 months in detention. *See, e.g., United States v. Theron*, 782 F.2d 1510,
16 1516 (10th Cir. 1986) (holding four months pretrial detention “too long” and ordering release
17 within 30 days if trial did not commence); *United States v. Gonzales Claudio*, 806 F.2d 334, 343
18 (2d Cir. 1986) (holding 14 month detention unconstitutional and recognizing that “[d]etention
19 that has lasted for fourteen months and, without speculation, is scheduled to last considerably
20 longer, points strongly to a denial of due process”); *United States v. Zannino*, 798 F.2d 544, 548
21 (1st Cir. 1986) (denying release on unique facts of case but recognizing that “assum[ing] that in
22 many, perhaps most, cases, sixteen months would be found to exceed the due process limitations
23 on the duration of pretrial confinement”); *United States v. Chen*, 820 F. Supp. 1205, 1210 (N.D.
24 Cal. 1992) (one year detention unconstitutional); *United States v. Lofranco*, 620 F. Supp. 1324,
25 1326 (N.D.N.Y. 1985) (six-month detention unconstitutional).

26 74. The liberty interest of a person subjected to prolonged civil confinement eventually
27 becomes dispositive, such that *no* degree of government interest can outweigh it. Indeed, Mr.
28 Flores Jimenez’s confinement of over 33 months already exceeds the duration of civil

1 confinement that the Second Circuit has held as the *outer limit* of what the Constitution could
2 withstand, even when *no* conditions of release could accomplish the government's non-punitive
3 objectives. *See United States v. Gonzales Claudio*, 806 F.2d 334, 341 (2d Cir. 1986) (setting
4 outer limit of 14 months). The duration of Mr. Flores Jimenez's confinement has also well
5 exceeded the outer limit that has been set by the First Circuit. *See Zannino* 798 F.2d at 548–49
6 (setting outer limit of 16 months). But the Court need not reach the issue here, because
7 conditions of release can sufficiently protect against any conceivable government interest.

8 75. The punitive and impermissible nature of Mr. Flores Jimenez's detention is also
9 supported by the fact that his detention at GSA has been indistinguishable and, by most metrics,
10 worse than the conditions of his criminal custody. Mr. Flores Jimenez has already completed
11 the term of punishment that the state of California determined was appropriate for his underlying
12 criminal convictions. Yet, Mr. Flores Jimenez has been subjected to unlivable and inhumane
13 conditions at GSA. Due process prohibits conditions of civil detention that are the same as or
14 worse than criminal custody. *King*, 885 F.3d at 556–57.

15 76. Mr. Flores Jimenez has identified more than “one difference between the conditions of
16 his immigration detention and his state custody,” including worsening conditions related to
17 access to and quality of food, mental health care, general medical care, and issues with
18 overcrowding and cleanliness. *Espinoza v. Wofford*, No. 1:24-CV-01118-SAB-HC, 2025 WL
19 1556590, at *9 (E.D. Cal. June 2, 2025); *see* Exh A, ¶ 23–37. Mr. Flores Jimenez feels these
20 worsening conditions acutely due to their impact on his mental health and the limits they impose
21 on his coping mechanisms. *Espinoza*, No. 1:24-CV-01118-SAB-HC, 2025 WL 1556590, at *9.

22 77. Food portions in GSA are becoming smaller, with staff becoming more restrictive on
23 food access as the number of detainees increases. *See* Exh A, ¶ 33. The food provided by GSA
24 is inedible and often uncooked. *Id.* Mr. Flores Jimenez needs to supplement his diet with food
25 from the commissary, otherwise he would go hungry. *Id.* But the commissary prices at GSA
26 are double those in prison. *Id.* When Mr. Flores does eat the food provided by GSA, he often
27 experiences stomach issues. *Id.*

28 78. GSA has also become increasingly unclean. *Id.* at ¶ 34. The bathrooms are full of urine

1 and hair. *Id.* Mr. Flores Jimenez attributes the current state of uncleanness to overcrowding in
 2 his unit. *Id.* He believes the unsanitary conditions also led to his first UTI, something he did
 3 not even experience while homeless. *Id.* He has struggled to gain access to basic hygiene
 4 products, such as toothbrushes or toilet paper, having to wait three to four days in between
 5 requests for these essential items. *Id.* ¶ 35. The delay in receiving basic necessities also extends
 6 to the availability of fresh undergarments and laundry access. *Id.*

7 79. As an individual diagnosed with several mental illnesses, consistent and quality medical
 8 care is essential to Mr. Flores Jimenez's health. While in prison, Mr. Flores Jimenez received
 9 his medication at regularly scheduled intervals. ¶ 25. In contrast, GSA's irregular medication
 10 schedule has led to his missing on average three to five doses a month. *Id.* ¶ 26. The California
 11 Department of Justice also recently identified GSA as having "inadequate medication
 12 management."⁶

13 80. In prison, Mr. Flores Jimenez had frequent visits by a mental health professional who
 14 would help him manage his anxiety. *Id.* ¶ 31. He does not have regular check-ins with a mental
 15 health professional at GSA, but instead his medication is simply renewed monthly. *Id.* ¶ 32. It is
 16 unclear whether Mr. Flores Jimenez's medical needs are being adequately addressed where it
 17 appears that the "progress notes in [his] medical charts were . . . copied and pasted from
 18 previous visits rather than reflecting the treatment and observations of mental health staff
 19 present during the visits documented."⁷ Exh. A at ¶ 37. Overall, while at GSA, Mr. Flores
 20 Jimenez is subjected to subpar mental health treatment, as GSA's "[m]ental health and medical
 21 staff d[o] not engage in appropriate treatment planning or multidisciplinary treatment to address
 22 [his] needs."⁸

23 81. A major part of Mr. Flores Jimenez's coping mechanism for his mental health is exercise
 24 and yard time. *Id.* ¶ 27–28. Yard time has become increasingly restricted at GSA, with overall

25 ⁶ CAL. DEP'T OF JUSTICE, IMMIGRATION DETENTION IN CALIFORNIA: A COMPREHENSIVE REVIEW WITH A
 26 FOCUS ON MENTAL HEALTH 53, (2025), <https://oag.ca.gov/system/files/media/immigration-detention-2025.pdf>.

27 ⁷ CAL. DEP'T OF JUSTICE, IMMIGRATION DETENTION IN CALIFORNIA: A COMPREHENSIVE REVIEW WITH A
 28 FOCUS ON MENTAL HEALTH 5, (2025), <https://oag.ca.gov/system/files/media/immigration-detention-2025.pdf>.

⁸ *Id.* at 53

1 yard time being cut down from four hours daily to three. *Id.* ¶ 28. Further, Mr. Flores
2 Jimenez's other main coping mechanism, contact with his family, has also become more
3 restricted. Mr. Flores Jimenez does not have free phone calls, as he did in prison, but must pay
4 for phone calls. *Id.* at ¶ 32. Availability is becoming more scarce as more detainees join his
5 unit. *Id.* GSA is also cracking down on in-person visitation, starting visitation timers during
6 their slotted start times, even if visitors are delayed. *Id.* ¶ 35. This is especially difficult for Mr.
7 Flores Jimenez's family members who live a nearly four-hour drive from GSA. *See* Exhs. M–Q.
8 82. As described above, conditions at GSA have recently deteriorated due to overcrowding
9 which began in January 2025. Exh. A, ¶ 28. Considering that Mr. Flores Jimenez was last
10 before an IJ for bond in June 2023, no adjudicator has resolved the question of whether current
11 conditions are excessive as to Mr. Flores Jimenez. *See Romero-Romero v. Wofford*, No. 1:24-
12 CV-00944-SKO (HC), 2025 WL 391861, at *9 (E.D. Cal. Feb. 4, 2025) (finding that the
13 “question whether the conditions are excessive to him has been resolved by the IJ in the
14 previous bond hearing.”)

15 83. Mr. Flores Jimenez's prolonged detention is further unjustified because any risk of flight
16 or danger can be successfully mitigated with less restrictive measures than physical custody. In
17 other words, the Government's objectives can be accomplished through “alternative and less
18 harsh methods,” including reasonable conditions of supervision upon release. *Jones*, 393 F.3d at
19 932. 86.

20 84. Immigration authorities already claim to have developed and successfully implemented
21 programs to supervise individuals while their removal proceedings remain pending. ICE's
22 Intensive Supervision Appearance Program (“ISAP”), for example, has achieved near-perfect
23 compliance with court obligations. *See Hernandez*, 872 F.3d at 991 (ISAP “resulted in a 99%
24 attendance rate at all EOIR hearings and a 95% attendance rate at final hearings”).

25 85. Such alternative supervision programs are also significantly less costly than continued
26 incarceration. According to a recent ICE budget overview published by DHS, the daily cost of
27
28

detention in fiscal year 2023 was \$187.48 per day.⁹ Applied here, the Government has already spent over \$189,000 to house, feed, and provide 24-hour staffing to detain Mr. Flores Jimenez for over 33 months. Mr. Flores Jimenez's release from custody would significantly reduce the government's added burden on taxpayers for the duration of his case, which could continue for months or years into the future.

86. Moreover, Mr. Flores Jimenez has a structured release plan that includes enrollment in a vigorous outpatient rehabilitation and mental health program, in combination with several layers of support from family and community organizations. *See* Exh. T. The conditions of Mr. Flores Jimenez's release will successfully protect any conceivable governmental interest; thus his continued detention is unconstitutionally punitive.

87. Mr. Flores Jimenez has already been subject to detention for over 33 months and is expected to remain in detention at least several more months, and possibly years, if his case is remanded and if either side appeals after a new decision on remand. All the while, Mr. Flores Jimenez has already completed his criminal sentence for his past convictions that occurred over three years ago. Because Mr. Flores Jimenez has deep ties and a strong support system in the United States, and has demonstrated a concrete plan for his re-entry, the length and conditions of his confinement are not proportional to any risk he currently poses.

C. This Court Has Authority to Order Release as a Remedy to a Substantive Due Process Violation.

88. If the Court finds that Mr. Flores Jimenez's continued detention is punitive and violates substantive due process, the proper remedy is to order release.

89. That remedy is well within this Court's habeas power. The federal habeas statute directs district 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; *see also* *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987) (explaining that as far back as the nineteenth century, "the Court interpreted the predecessor of § 2243 as vesting a federal court 'with the largest power to control and direct the

⁹ DEP'T OF HOMELAND SEC., U.S. IMMIGR. & CUSTOMS ENFORCEMENT BUDGET OVERVIEW 26, (2025), https://www.dhs.gov/sites/default/files/2024-04/2024_0308_us_immigration_and_customs_enforcement.pdf

1 form of judgment to be entered in cases brought up before it on habeas corpus”) (quoting *In re*
2 *Bonner*, 151 U. S. 242, 261 (1894)).

3 90. In immigration habeas cases, courts regularly order release upon determining that
4 detention violates substantive due process. *See, e.g., Lawson v. Gerlinski*, 332 F. Supp. 2d. 735,
5 744–45 (M.D. Pa. 2004) (concluding that petitioner’s prolonged immigration detention violated
6 substantive due process and ordering release); *Oyedemi v. Ashcroft*, 332 F. Supp. 2d 747, 752
7 (M.D. Pa. 2004) (same); *Nunez- Pimentel v. ICE*, No. 1:07-CV-1915, 2008 WL 2593806, at *5
8 (M.D. Pa. June 27, 2008) (same); *see also Ekeh v. Gonzales*, 197 F. App’x 637, 638 (9th Cir.
9 2006) (ordering supervised release pursuant to *Zadvydas*); *Bah v. Cangemi*, 489 F. Supp. 2d
10 905, 919 (D. Minn. 2007) (same); *Nguyen v. Fasano*, 84 F. Supp. 2d 1099, 1113 (S.D. Cal.
11 2000) (issuing order to show cause why petitioner should not be released pursuant to *Zadvydas*).
12 Indeed, district courts in this Circuit have regularly ordered release when conditions of
13 confinement are excessive in relation to a detained person’s risk of flight or danger to the
14 community. *See, e.g., Bent v. Barr*, 445 F.Supp.3d 408, 414–415, 421 (N.D. Cal. 2020) (finding
15 that petitioner’s previous two felony convictions did not outweigh considerations in favor of his
16 release); *Doe v. Barr*, No. 20-cv-02141-LB, 2020 WL 1820667, *8–*10 (N.D. Cal. Apr. 12,
17 2020) (finding that the risks petitioner faced in detention outweighed any risk of danger
18 considering his rehabilitation); *Doe v. Barr*, No. 20-cv-02263-RMI, 2020 WL 1984266, *6–*7
19 (N.D. Cal. Apr. 27, 2020) (finding that petitioner’s health issues, including his mental illnesses,
20 made his detention excessive in light of the COVID-19 pandemic); *see also Maklad v. Murray*,
21 No. 1:25-CV-00946 JLT SAB, 2025 WL 2299376, at *10 (E.D. Cal. Aug. 8, 2025) (ordering
22 petitioner’s immediate release via preliminary injunction after her parole was revoked without
23 notice); *Singh v. Andrews*, No. 1:25-CV-00801-KES-SKO (HC), 2025 WL 1918679, at *1 (E.D.
24 Cal. July 11, 2025) (ordering petitioner’s immediate release via preliminary injunction after his
25 parole was revoked without notice).

26 91. Under such circumstances, district courts may impose conditions of release to manage the
27 governmental interests at stake. *See, e.g., Ortuño*, 2020 WL 1701724, *5 (setting conditions of
28 release); *Zepeda Rivas v. Jennings*, No. 20-CV-02731-VC, 465 F. Supp. 3d 1028, 1036 (N.D.

Cal. 2020) (citing inherent habeas authority to release on bail). This Court has authority to craft such appropriate conditions, so long as the conditions satisfy constitutional safeguards. *See Hernandez*, 872 F.3d at 990–91 (“[I]nability to post money bail” violates due process “if the individual’s ‘appearance at trial could reasonably be assured by one of the alternate forms of release.’”) (quoting *Pugh v. Rainwater*, 572 F.2d 1053, 1058 (5th Cir. 1978) (en banc)).

92. Here, because Mr. Flores Jimenez’s prolonged detention is excessive, punitive, and unnecessary in relation to any governmental interest, the Court must order his release.

II. Alternatively, Petitioner’s Prolonged Detention Without an Individualized Bond Hearing in 33 Months Violates Due Process.

93. Because Mr. Flores Jimenez is subject to punitive civil incarceration in violation of substantive due process, this Court need not reach the question of whether his detention also violates procedural due process. However, if the Court does reach the issue, the Court should find that Mr. Flores Jimenez’s prolonged and ongoing detention without any individualized evaluation of the government’s asserted justification for confinement violates procedural due process. *See Zadvydas*, 533 U.S. at 693 (2001) (citations omitted). Mr. Flores Jimenez is thus entitled to a prompt, evidentiary custody hearing by this Court, which must “hear and determine the facts” of his habeas petition and “dispose of the matter as law and justice require.” 28 U.S.C. § 2243.

A. Petitioner Is Entitled to a Custody Hearing Where He Has Been Detained Longer Than Six Months.

94. Detention without a bond hearing becomes unconstitutional when it exceeds six months. *See Demore*, 538 U.S. 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*, 53 F.4th at 1091 (“[O]nce the [noncitizen] has been detained for approximately six months, continuing detention becomes prolonged” (quoting *Diouf II*, 634 F.3d at 1091) (cleaned up); *Peters, v. Wofford*, No. 1:25-CV-00497-SKO (HC),

2025 WL 2299801, at *6 (E.D. Cal. Aug. 8, 2025) (noting “the six-month presumptive period set forth in *Zadvydas* beyond which continued detention becomes prolonged”).

95. The recognition that six months is a substantial period of confinement, after which additional process is required to justify continued incarceration, is deeply rooted in our legal tradition. With few exceptions, “in the late eighteenth 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, 88 S. Ct. 1444, 1454 (1968). Consistent with this tradition, the Supreme Court has recognized that six months is a meaningful benchmark in various contexts where a person’s liberty is at stake. *See, e.g., United States v. Nachtigal*, 507 U.S. 1, 5 (1993) (characterizing as “severe” the “loss of liberty caused by imprisonment for more than six months”); *Blanton v. North Las Vegas, Nev.*, 489 U.S. 538, 542–43 (1989) (reasoning that because “the loss of liberty” from incarceration is so “sever[e]” and “an ‘intrinsically different’ form of punishment,” additional procedural safeguards after six months are necessary); *Taylor v. Hayes*, 418 U.S. 488, 495–96 (1974) (holding that states may not impose sentences exceeding six months without a jury trial).

96. The Supreme Court has also extended this six-month line to the civil context in a case setting out procedural requirements for civil commitments related to mental health. *See McNeil*, 407 U.S. at 249–52. In *McNeil*, the Court held that due process requires the duration of even shorter-term confinements to be “strictly limited,” and that the six-month limit for civil commitments without an individualized inquiry originally laid out by the relevant statute “provides a useful benchmark.” *Id.* at 249–50. 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 reinterrogation 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).

97. In the immigration context, the Ninth Circuit has found that when “detention crosses the six-month threshold and release or removal is not imminent,” “a hearing before a neutral decision maker” is a “reasonable” procedural safeguard. *Diouf II*, 634 F.3d at 1092. Although

1 *Diouf II* specifically addressed the legality of prolonged detention under 8 U.S.C. § 1231(a)(6),
 2 its reasoning applies equally, if not with more force, to immigration detention under Section
 3 1226(c). *See id.* at 1087 (recognizing that although “[t]he government may be correct that at the
 4 margin,” Section “1231(a)(6) detainees have a lesser liberty interest” than Section 1226(a)
 5 detainees, and the government may have a “marginally greater” interest in detaining the former
 6 group, those differences do not change the outcome). Relying on this clear line of precedent, a
 7 court in this district applied the six-month line to immigration detention under Section 1226(c):
 8 holding that, after six months of detention, the Constitution requires an individualized inquiry
 9 into whether his custody is justified. *See Rodriguez v. Nielsen*, No. 18-cv-04187-TSH, 2019
 10 WL 7491555, at *6 (N.D. Cal. Jan. 7, 2019) (“[D]etention becomes prolonged after six months
 11 and entitles [a detainee] to a bond hearing.”); *see also Diouf II*, 634 F.3d at 1092 n.13 (holding
 12 that detention is prolonged and thus requires heightened procedural safeguards “when it has
 13 lasted six months and is expected to continue more than minimally beyond six months.”).
 14 98. Because ICE has already detained Mr. Flores Jimenez for more than 33 months—over
 15 five times the six-month threshold, Mr. Flores Jimenez is clearly entitled to a prompt,
 16 individualized inquiry into the justification for his detention by a neutral arbiter—i.e., this Court.
 17 *See Rodriguez*, 2019 WL 7491555, at *7.

18 **B. Petitioner Is Entitled to an Individualized Hearing Under Either the *Lopez***
 19 **Multi-Factor Approach or the *Mathews* Balancing Test, and His Entitlement to a**
 20 **Hearing is Strengthened by the *German Santos* Factors.**

21 99. Courts in the Ninth Circuit have applied various multifactor tests to determine whether a
 22 petitioner’s detention without an individualized bond hearing has become so prolonged that it
 23 violates due process. *Abdul-Samed*, No. 1:25-CV-00098-SAB-HC, 2025 WL 2099343, at *6
 24 (collecting examples of the different multi-factor tests applied in this circuit). Under *Lopez*,
 25 where a petitioner is requesting an initial bond hearing, courts consider “the total length of
 26 detention to date, the likely duration of future detention, and the delays in the removal
 27 proceedings caused by the petitioner and the government.” *Lopez*, 631 F. Supp. 3d at 879.
 28 Some courts have chosen to apply the *Mathews* test when the petitioner is “seeking a second

bond hearing.” *Hilario M.R. v. Warden, Mesa Verde Det. Ctr.*, No. 1:24-CV-00998-EPG-HC, 2025 WL 1158841, at *7 (E.D. Cal. Apr. 21, 2025); *see also Espinoza* No. 1:24-CV-01118-SAB-HC, 2025 WL 1556590, at *12 (same). Under either approach, and in line with the additional factors outlined by the Third Circuit in *German Santos*, Mr. Flores Jimenez’s 33 months of detention requires that he receive a prompt bail hearing.

1. The *Lopez* factors weigh in favor of ordering an individualized bond hearing for Petitioner.

100. This Court should apply the *Lopez* test where Petitioner’s initial bond hearing took place over 26 months ago, and the rationales the IJ provided for denying Mr. Flores Jimenez bond are moot since the IJ found Mr. Flores Jimenez rehabilitated. *Compare* Exh. F, with Exh. I at 43. No neutral adjudicator has assessed whether Mr. Flores Jimenez poses a risk of danger or flight since this rehabilitation. “To determine whether § 1226(c) detention has become unreasonable, [courts] will look to the total length of detention to date, the likely duration of future detention, and the delays in the removal proceedings caused by the petitioner and the government.” *Lopez*, 631 F. Supp. 3d at 879. All three factors discussed in *Lopez* weigh in favor of this Court holding a bail hearing for Petitioner.

101. First, “the length of detention to date, ‘which is the most important factor,’” weighs in favor of Mr. Flores Jimenez. *Abdul-Samed*, No. 1:25-CV-00098-SAB-HC, 2025 WL 2099343, at *8 (internal citations omitted). “In general, ‘[a]s detention continues past a year, courts become extremely wary of permitting continued custody absent a bond hearing.’” *Id.* (quoting *Gonzalez v. Bonnar*, No. 18-cv-05321-JSC, 2019 WL 330906, at *3 (N.D. Cal. Jan. 25, 2019)) (alteration in original) (internal quotations omitted); *see also Lopez*, 631 F. Supp. 3d at 880 (acknowledging that “detention ‘exceed[ing] one year . . . is . . . presumptively unreasonable’”) (quoting *Alphonse v. Moniz*, No. 21-11844-FDS, 2022 WL 279638, at 9* (D. Mass. Jan. 31, 2022)). Some courts in this circuit have found significantly less time in detention unreasonable. *See e.g., Perera v. Jennings*, No. 21-cv-04136-BLF, 2021 WL 2400981, *2 (granting TRO and ordering individualized bond hearing for petitioner detained almost two months). Mr. Flores Jimenez’s detention of 33 months is therefore unreasonably prolonged and supports granting

1 Mr. Flores Jimenez's request for a bail hearing.

2 102. **Second**, the likely duration of Petitioner's future detention pending his Ninth Circuit
3 appeal also weighs in favor of finding his prolonged detention unreasonable. Petitioner's PFR is
4 currently pending before the Ninth Circuit, and his removal is stayed until he receives a decision
5 in his appeal. *See* K. If Petitioner is successful in his PFR, then his case will be remanded to
6 the BIA and possibly further remanded to the IJ. The completion of Petitioner's judicial review
7 by the Ninth Circuit and potential administrative appeal "would add months more in prison"
8 such that the likelihood that [petitioner's] detention will continue strongly supports a finding of
9 unreasonableness." *Lopez*, 631 F. Supp. 3d at 881 (quoting *German Santos*, 965 F.3d at 212).
10 The likelihood of continued delay, therefore, weighs in his favor.

11 103. **Third**, and lastly, the delays in Petitioner's removal proceedings do not undermine the
12 unreasonableness of his prolonged detention.

13 104. The continuances that Petitioner requested in immigration court were in pursuit of
14 "raising legitimate defense[s] to removal . . . and such challenges to his removal cannot
15 undermine his claim that detention has become unreasonable." *Lopez*, 631 F. Supp. 3d at 881
16 (quoting *Liban M.J. v. Sec'y of Dep't of Homeland Sec.*, 367 F. Supp. 3d 959, 965 (D. Minn.
17 2019)). Petitioner's immigration court proceedings commenced on November 17, 2022. *See*
18 Exh. B. As the IJ noted, Petitioner made three requests for continuances in immigration court
19 proceedings. *See* Exh. I at 2. The first was immediately following his counsel's appointment as
20 his QR, *see* Exh. E at 14, the second was to obtain a psychological evaluation, *id.* at 19, and the
21 third was requesting a "one-to-two week continuance" to review criminal records, *id.* at 24.

22 105. Petitioner's PFR is currently pending at the Ninth Circuit. *See generally* Exh. K. Courts
23 have found that where a petitioner's appeal is made in good faith, this fact weighs in favor of the
24 petitioner. *See Singh v. Garland*, No. 1:23-CV-01043-EPG-HC, 2023 WL 5836048, at *9 (E.D.
25 Cal. Sept. 8, 2023) ("As there is nothing before the Court indicating that Petitioner is acting in
26 bad faith in challenging his removal, the Court finds this factor weighs in favor of Petitioner.");
27 *see also German Santos*, 965 F.3d at 211 ("But we do not hold an alien's good-faith challenge to
28 his removal against him, even if his appeals or applications for relief have drawn out the

proceedings.).

106. Meanwhile, the Government has caused numerous delays in Petitioner's administrative and Ninth Circuit proceedings. First, the Government was required to re-serve Petitioner's NTA. *See* Exh. E at 28. Petitioner then appealed the IJ's first erroneous denial of his claims for relief, and the Board granted remand on April 25, 2024. *See* Exh. H. Even where courts do not "hold the agency's legal errors against the Government, . . . detention under 1226(c) can still grow unreasonable." *German Santos*, 965 F.3d at 211.

107. Thus, while both Mr. Flores Jimenez and the Government have contributed to some delay in his proceedings, Mr. Flores Jimenez's delays have been for the permissible purpose of "rais[ing] legitimate defenses to his removal." *Lopez*, 631 F. Supp. 3d at 881. Indeed, the Ninth Circuit acknowledged that Mr. Flores Jimenez's current PFR is not meritless when it granted his motion for a stay of removal. *See* Exh. K; *see also Nken v. Holder*, 556 U.S. 418, 434 (2009) ("The first factor [a court considers when deciding whether to grant a motion for stay of removal], a strong showing of a likelihood of success on the merits, requires more than a mere possibility that relief will be granted."). The Government's delays, on the other hand, have been the result of its own erroneous actions. *See* Exh. E at 28; *see also* Exh. J. The final *Lopez* factor, therefore, weighs in Mr. Flores Jimenez's favor. Because all three factors weigh in his favor, this Court should grant Mr. Flores Jimenez's request for a prompt bail hearing.

2. Petitioner is entitled to an individualized determination under the *Mathews* balancing test.

108. The *Mathews* test balances (1) the private interest threatened by governmental action; (2) the risk of erroneous deprivation of such interest and the probable value of additional procedural safeguards; and (3) the government interest. 424 U.S. at 335. Numerous courts applying the *Mathews* test have found that prolonged detention under Section 1226(c) without an individualized hearing violates procedural due process. *See, e.g., Diep v. Wofford*, No. 1:24-CV-01238-SKO (HC), 2025 WL 604744, at *4-*5 (E.D. Cal. Feb. 25, 2025) (finding all three factors weighed in petitioner's favor where petitioner received no bond hearing in 13 months of detention and ordering a bond hearing); *Sho v. Current or Acting Field Off. Dir.*, No. 1:21-CV-

1 01812 TLN AC, 2023 WL 4014649, at *4 (E.D. Cal. June 15, 2023), *report and*
2 *recommendation adopted*, No. 1:21-CV-1812-TLN-AC, 2023 WL 4109421 (E.D. Cal. June 21,
3 2023) (finding all three factors weighed in favor of petitioner where petitioner had been detained
4 28 months and collecting cases finding the same but where petitioners were detained for less
5 time).

6 109. Because Mr. Flores Jimenez has not received a bond hearing in 26 months, the *Mathews*
7 factors clearly weigh in his favor and this Court should promptly hold a bail hearing to evaluate
8 whether Respondents can justify his continued detention.

9 110. First, Mr. Flores Jimenez's private interest in his liberty, the main private interest here, is
10 "unquestionably substantial." *Hilario M.R. v. Warden*, Mesa Verde Det. Ctr., No. 1:24-CV-
11 00998-EPG-HC, 2025 WL 1158841, at *7 (E.D. Cal. Apr. 21, 2025) (quoting *Rodriguez Diaz*,
12 53 F.4th at 1207) (internal quotations omitted). "Freedom from imprisonment—from
13 government custody, detention, or other forms of physical restraint—lies at the heart of the
14 liberty [the Due Process Clause] protects." *Zadvydas*, 533 U.S. at 690. Mr. Flores Jimenez's
15 private interest is particularly strong because the length of his detention is significant. *See id.* at
16 701 (strength of liberty interest increases as period of confinement grows).

17 111. ICE has already imprisoned Mr. Flores Jimenez for over 33 months, and neither release
18 nor removal are expected anytime soon, as Mr. Flores Jimenez continues to mount a good faith
19 defense to removal. *See Diouf II*, 634 F.3d at 1091–92 ("When detention crosses the six-month
20 threshold and release or removal is not imminent, the private interests at stake are profound.").
21 Mr. Flores Jimenez's time in civil detention is now over five times the length of the "brief" six-
22 week detention contemplated by the Supreme Court in *Demore*. *See Demore*, 538 U.S. at 523,
23 530 (citing an average detention length of one and a half months for immigration cases).

24 112. The process Mr. Flores Jimenez has received to protect this interest so far was
25 insufficient to tip this factor in the Government's favor. Mr. Flores Jimenez's initial bond
26 hearing took place over 26 months ago. Exh. F. The IJ has since found Mr. Flores Jimenez
27 rehabilitated in the context of her decision on the merits of his claim—a finding antithetical to
28 her rationales for denying bond. *Compare* Exh. I at 43, *with* Exh. F. When Mr. Flores Jimenez

1 requested a custody redetermination based on that rehabilitation and worsening conditions at
2 GSA, the IJ erroneously refused for lack of jurisdiction. *See* Exh. O; *see also Prieto-Romero v.*
3 *Clark*, 534 F.3d 1053, 1059 (9th Cir. 2008). His only remedy is therefore before this Court.

4 113. Mr. Flores Jimenez's private interest is further strengthened by the conditions of his civil
5 detention at GSA. GSA is formerly a state prison and the conditions at GSA remain equally or
6 more punitive than those of a prison. *See supra* at ¶¶ 75–81; *Gonzalez*, No. 18-cv-0531-JSC,
7 2019 WL 330906, at *5 (“[C]ourts consider the conditions of the [noncitizen’s] detention
8 because [noncitizens] held under § 1226(c) are subject to civil detention rather than criminal
9 incarceration.” (quoting *Muse v. Sessions*, 409 F. Supp. 3d 707, 717 (D. Minn. 2018)); *Martinez*
10 *v. Clark*, No. C18-1669-RAJ-MAT, 2019 WL 5968089, at *9 (W.D. Wash. May 23, 2019)
11 (“[T]he more that “conditions under which the [noncitizen] is being held resemble penal
12 confinement, the stronger his argument that he is entitled to a bond hearing.” (citation omitted)).

13 114. Mr. Flores Jimenez's liberty interest, furthermore, is particularly profound because of the
14 depth of his ties to the United States, which must be afforded weight under the *Mathews* test.
15 *See Landon*, 459 U.S. at 34 (in applying the first *Mathews* factor, weighing the right to “rejoin
16 [one’s] immediate family” as “rank[ing] high among the interests of” a detained individual with
17 longstanding ties to the U.S.); *id.* (recognizing the “right ‘to stay and live and work in this land
18 of freedom’” (citation omitted)). Mr. Flores Jimenez has lived in the United States for nearly his
19 entire life, since immigrating as an LPR at just four years old. *See* Exh. A at 3. His entire
20 family resides in the United States, including his mother, father, brother, sisters, and nephews.
21 *See id.* at ¶ 2. His release will allow him to further these bonds, particularly with his young
22 nephews. *Id.* Mr. Flores Jimenez's extensive ties to the United States heighten his interest in
23 being at liberty, in the company of his family and community, while his immigration
24 proceedings continue. *See id.* ¶ 41; Exhs. M–Q (letters of support from Mr. Flores Jimenez's
25 family members and community).

26 115. Importantly, “the weight on this side of the *Mathews* scale” is not “offset” by the
27 circumstances of Mr. Flores Jimenez's involvement with the criminal legal system, nor the fact
28 that he is in removal proceedings. *Hamdi v. Rumsfeld*, 542 U.S. 507, 530 (2004) (plurality op.).

1 This is because “commitment for *any* purpose constitutes a significant deprivation of liberty that
2 requires due process protection, and at this stage in the *Mathews* calculus, we consider the
3 interest of the *erroneously* detained individual.” *Id.* (emphasis in original) (internal citations and
4 quotation marks omitted).

5 116. **Second**, the risk of erroneous deprivation and the probable value of additional procedural
6 safeguards also weigh heavily in Mr. Flores Jimenez’s favor. “[T]he risk of an erroneous
7 deprivation of liberty in the absence of a hearing before a neutral decisionmaker is substantial.”
8 *Diouf II*, 634 F.3d at 1092. The risk that Mr. Flores Jimenez has been erroneously deprived of
9 his liberty is significantly high because he has been detained for over 26 months without any
10 individualized inquiry into whether the government can justify his detention based on the
11 current risk of flight or danger. *See Zadvydas* at 690 (permissible purposes for immigration
12 detention are risk of flight or danger to the community). Conversely, “the probable value of
13 additional procedural safeguards—an individualized evaluation of the justification for his
14 detention—is high, because Respondents have provided virtually no procedural safeguards at
15 all.” *Jimenez*, 2020 WL 510347, at *3 (granting habeas petition for person who had been
16 detained for one year without a bond hearing); *see also Perera*, 2021 WL 2400981, at *4
17 (“[T]he value of providing Perera with a hearing is high.”). Moreover, “[t]hat there is no
18 remotely certain end in sight to [Mr. Flores Jimenez’s] custody only raises the risk of erroneous
19 deprivation.” *Id.*

20 117. Furthermore, the IJ herself found that Mr. Flores Jimenez’s equities have increased
21 during his time in detention such that her rationale for originally finding him a danger to the
22 community, i.e., his risk of relapsing, is diminished. *See Exh. I* at 42–43 (finding that Mr.
23 Flores Jimenez “has been sober for an extended period of time, has been receiving treatment for
24 depression, understands the negative consequences that come from using alcohol and illegal
25 drugs to self-medicate, and is willing and eager to receive support and help from . . . his family
26 and other services”). Thus, “there is value in an additional bond hearing after almost three years
27 of detention with new developments regarding [Mr. Flores Jimenez’s] rehabilitation efforts.”
28 *Eliazar G.C.*, No. 1:24-CV-01032-EPG-HC, 2025 WL 711190, at *7.

118. **Third**, the Government's interest in continuing to detain Petitioner without any individualized hearing is very weak. The government's interest at stake here is not its ability to continue to detain Mr. Flores Jimenez, but rather its ability to continue to detain him for longer than *33 months without any individualized review*. See e.g., *Carballo*, No. 1:25-CV-00978-KES-EPG (HC), 2025 WL 2381464, at *8 ("[T]he government's interest in detaining petitioner without a hearing is 'low.'") (quoting *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019); *Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 964 (N.D. Cal. 2019) (same); *Lopez Reyes v. Bonnar*, 362 F. Supp. 3d 762, 777 (N.D. Cal. 2019) (same); *Singh v. Barr*, 400 F. Supp. 3d 1005, 1021 (N.D. Cal. 2019) (same)).

119. The cost of providing an individualized inquiry is also minimal where "[r]equiring the government to provide [Mr. Flores Jimenez] with a bond hearing does not meaningfully undermine the government's interest in detaining non-citizens who pose a danger to the community or are a flight risk." *Sho*, No. 1:21-CV-01812 TLN AC, 2023 WL 4014649, at *4.

120. In any event, it is "always in the public interest to prevent the violation of a party's constitutional rights." See *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Sammartano v. First Judicial Dist. Court*, 303 F.3d 959, 974 (9th Cir. 2002)); cf. *Doe v. Kelly*, 878 F.3d 710, 718 (9th Cir. 2017) ("[T]he 'government suffers no harm from an injunction that merely ends unconstitutional practices and/or ensures that constitutional standards are implemented.'") (quoting *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013)).

121. Applying these standards, courts in this district and circuit have repeatedly held that continued detention violates procedural due process for individuals who were held under the same detention statute, and for similar or less time, than Mr. Flores Jimenez. See, e.g., *Lopez*, 631 F. Supp. 3d at 880 (holding the petitioner's detention of one year under 1226(c) unreasonably prolonged); *Sho*, No. 1:21-CV-01812 TLN AC, 2023 WL 4014649, at *4 (finding the petitioner's interest in receiving an individualized bond hearing "heightened" in light of his 28 months in detention"). This Court should hold so, as well.

122. *Rodriguez Diaz v. Garland* 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

1 different detention statute, Section 1226(a), did not violate procedural due process. 53 F.4th at
2 1203. Unlike Section 1226(c), Section 1226(a) mandates that detained individuals receive an
3 individualized bond hearing at the outset of detention and guarantees further bond hearings upon
4 a material change in circumstances. *See* 8 C.F.R. § 1236.1; 1003.19(e). The panel's decision in
5 *Rodriguez Diaz*—and its evaluation of the underlying *Mathews* factors—was predicated on the
6 immediate and ongoing availability of this administrative process under Section 1226(a). *See*
7 *Rodriguez Diaz*, 53 F.4th at 1202 (“Section 1226(a) and its implementing regulations provide
8 extensive procedural protections that are unavailable under other detention provisions, including
9 several layers of review of the agency’s initial custody determination, an initial bond hearing
10 before a neutral decisionmaker, the opportunity to be represented by counsel and to present
11 evidence, the right to appeal, and the right to seek a new hearing when circumstances materially
12 change”); *see also id.* at 1207, 1209 (initial bond hearing and availability of future bond
13 hearings reduced petitioner’s private interest, sufficiently protected his liberty interest, and
14 sufficiently mitigated risk of erroneous deprivation).

15 123. Since *Rodriguez Diaz*, courts in this Circuit have found that the analysis in that case does
16 not preclude the claim that procedural due process requires a bond hearing for those detained
17 under Section 1226(c). *See Singh*, No. 1:23-CV-01043-EPG-HC, 2023 WL 5836048, at *5
18 (noting that post *Rodriguez Diaz*, “*Mathews* remains a flexible test that can and must account
19 for the heightened governmental interest in the immigration detention context”); *Hogarth v.*
20 *Giles*, No. 5:22-cv-01809, Dkt. 20 at *16-17 (C.D. Cal. Jan. 11, 2023) (“[T]he analysis for [this]
21 *Mathews* factor here differs greatly from that of the Ninth Circuit in *Rodriguez Diaz*, primarily
22 due to the fact that Section 1226(c) provides no opportunity for any further bond determinations
23 for the duration of Petitioner’s detention . . . It cannot be that due process authorizes infinite
24 detention without any opportunity for reconsideration.”), *report and recommendation adopted in*
25 *relevant part*, Dkt. 24 (C.D. Cal. Feb. 23, 2023); *see also Pham v. Becerra*, No. 23-cv-01288-
26 CRB, 2023 WL 2744397 (N.D. Cal. Mar. 31, 2023) (granting petition and ordering
27 individualized hearing for petitioner subject to prolonged detention under Section 1226(c) after
28 *Rodriguez Diaz*).

3. The factors discussed in *German Santos* also favor Mr. Flores Jimenez.

124. To the extent the Court considers the factors discussed by the Third Circuit in *German Santos*, i.e., length of time the noncitizen has been detained, the likelihood of continued prolonged detention, and the conditions of confinement, those factors also weigh in favor of Mr. Flores Jimenez and his entitlement to an individualized custody evaluation.

125. Under that framework, the duration of detention is “[t]he most important factor,” *German Santos*, 965 F.3d at 211. Here, the more than 33 months Mr. Flores Jimenez has been detained is well beyond the six months to one year that most courts find presumptively unconstitutional absent a hearing. *See Lopez*, 631 F. Supp. 3d at 880; *see also Abdul-Samed*, No. 1:25-CV-00098-SAB-HC, 2025 WL 2099343, at *8. Where a habeas petitioner had been detained for “just over a year,” (less than the 33 months Mr. Flores Jimenez has been detained), the court found that this factor “weigh[ed] strongly in his favor.” *Gonzalez*, 2019 WL 330906, at *5 (emphasis added); *see also supra* at ¶ 119 (citing cases with similar durations of detention where a procedural due process violation was found). In short, this factor weighs decidedly in Mr. Flores Jimenez’s favor.

126. The three other *German Santos* factors also weigh in Flores Jimenez’s favor: First, detention is likely to continue for several more months, and possibly over another year. *See supra* ¶ 101; *German Santos*, 965 F.3d at 211 (“When the [noncitizen’s] removal proceedings are unlikely to end soon, this suggests that continued detention without a bond hearing is unreasonable.”). Second, looking to the reasons for the delay, Mr. Flores Jimenez cannot be blamed for his prolonged detention. *See supra* ¶¶ 102–06. To the extent there has been unnecessary delay in proceeding with his case, that delay is due to the government’s errors. *See German Santos*, 965 F.3d at 211.

127. Third, and finally, Mr. Flores Jimenez’s conditions of confinement are equal to or worse than conditions of criminal confinement. *See supra* at ¶¶ 71–86–36, 111. This factor weighs decisively in his favor. “The more that the conditions under which the [noncitizen] is being held resemble penal confinement, the stronger his argument that he is entitled to a bond hearing.” *De Paz Sales v. Barr*, 2019 WL 4751894, at *6 (N.D. Cal. Sept. 30, 2019) (internal quotation marks

omitted). “And as the length of detention grows, so does the weight that [courts] give this factor.” *German Santos*, 965 F.3d at 211. Because Mr. Flores Jimenez has been detained for more than 33 months in prison-like conditions, procedural due process requires an individualized hearing.

C. This Court Should Hold the Evidentiary Hearing to Which Petitioner Is Entitled.

128. If it finds a procedural due process violation, this Court should hold an evidentiary hearing to determine whether the government can justify further detention. While previous petitioners bringing procedural due process challenges to Section 1226(c) detention have explicitly sought (and received) bond hearings in immigration court, waiting for that additional process to run its course here would cause additional delay and erect further barriers to the relief Mr. Flores Jimenez seeks. Thus, this Court should hold the evidentiary custody hearing itself.

129. This Court’s habeas power gives it the authority to conduct evidentiary hearings and release a petitioner to bail. “[T]he federal habeas statute provides for a swift, flexible, and summary determination of [a petitioner’s] claim.” *Preiser v. Rodriguez*, 411 U.S. 475, 495 (1973). The statute directs district 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. Indeed, the federal habeas statute codifies the common law writ of habeas corpus as it existed in 1789. *See I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001) (“At 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 habeas courts power to hold a hearing and release a habeas petitioner to bail even absent a statute contemplating such release. *See 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))); *see also Mapp v. Reno*, 241 F.3d 221, 223 (2d Cir. 2001) (“We hold that the federal courts have the same inherent authority to admit habeas petitioners to bail in the immigration context as they do in criminal habeas cases.”).

130. District courts regularly exercise this authority in cases involving immigration detention.

1 *See Leslie v. Holder*, 865 F. Supp. 2d 627, 633 (M.D. Penn. 2012) (“[W]e are empowered to
2 conduct bail proceedings in habeas corpus proceedings brought by immigration detainees.
3 Indeed, the authority to conduct such hearing has long been recognized as an essential ancillary
4 aspect of our federal habeas corpus jurisdiction. . . . [T]here is nothing extraordinary or novel
5 about this practice of conducting bail hearings in connection with federal immigration habeas
6 corpus proceedings.”) (collecting cases); *Madrane v. Hogan*, 520 F. Supp. 2d 654, 669-671
7 (M.D. Pa. 2007) (holding evidentiary hearing and ordering conditional release from
8 unconstitutional detention); *see also Carballo v. Andrew*, No. 1:25-CV-00978-KES-EPG (HC),
9 2025 WL 2381464, at *3 (E.D. Cal. Aug. 15, 2025) (noting the petitioner was previously
10 released “by the district court in the Northern District of California based on criteria including
11 that he was not a flight risk and did not pose a danger to the community”).

12 131. Requiring Mr. Flores Jimenez to prevail in this Court and then litigate another
13 administrative proceeding in his effort to remedy his unconstitutional detention would
14 undermine the “demand for speed, flexibility, and simplicity” that the federal habeas statute
15 requires. *Hensley*, 411 U.S. at 350. The Supreme Court has instructed district courts addressing
16 habeas claims “to cut through barriers of form and procedural mazes” and has “consistently
17 rejected interpretations of the habeas corpus statute that would suffocate the writ in stifling
18 formalisms or hobble its effectiveness with the manacles of arcane and scholastic procedural
19 requirements.” *Id.* (quoting *Harris v. Nelson*, 394 U.S. 286, 291 (1969)). Referring the
20 procedural safeguard that Mr. Flores Jimenez seeks to an administrative immigration adjudicator
21 as a separate litigation matter with its own separate appellate process would erect “barriers of
22 form and procedural mazes,” instead of following the Supreme Court’s instruction to eliminate
23 them. *See id.*

24 132. By holding the custody hearing itself, this Court can provide a truly “swift” and certain
25 remedy for a final resolution of Mr. Flores Jimenez’s detention. *See Preiser*, 411 U.S. at 495. It
26 also avoids the possibility that Mr. Flores Jimenez will be forced to return to this Court to
27 enforce its order after the IJ hearing is conducted, any potential denial is appealed to the BIA,
28 additional motions for injunctive relief are litigated in this Court, and disagreements over

whether the Court has jurisdiction over post-bond hearing claims are also adjudicated. *See, e.g., Jimenez v. Wolf*, No. 19-cv-07996-NC, 2020 WL 1082648, *4 (N.D. Cal. Mar. 6, 2020) (granting petitioner's motion for a temporary restraining order and ordering release where the court had previously ordered an immigration court bond hearing but that hearing did not comply with due process); *Ramos v. Sessions*, 293 F. Supp. 3d 1021, 1036-38 (N.D. Cal. 2018) (granting petitioner's motion to enforce and ordering release). In short, it is the swiftest way to ensure that, if the government cannot justify further detention, Mr. Flores Jimenez is relieved of further unnecessary and unconstitutional restrictions on his liberty.

D. At Any Custody Hearing, the Government Must Justify Petitioner's Continued Detention by Clear and Convincing Evidence.

133. Where a custody hearing is warranted as a procedural safeguard against unreasonably prolonged detention, the government must bear the burden of justifying continued confinement by clear and convincing evidence. *Singh v. Holder*, 638 F.3d 1196, 1205 (9th Cir. 2011). "Because it is improper to ask the individual to share equally with society the risk of error when the possible injury to the individual—deprivation of liberty—is so significant, a clear and convincing evidence standard of proof provides the appropriate level of procedural protection." *Id.* at 1203-04 (internal citations and quotation marks omitted); *see also Cooper v. Oklahoma*, 517 U.S. 348, 363 (1996) ("[D]ue process places a heightened burden of proof on the State in civil proceedings in which the 'individual interests at stake . . . are both particularly important and more substantial than mere loss of money'" (citation omitted)); *Foucha v. Louisiana*, 504 U.S. 71, 80-81 (1992) (requiring clear and convincing evidence to justify civil commitment because "[f]reedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause.").

134. In line with this principle, courts in this District that have ordered individualized hearings to remedy prolonged detention under Section 1226(c) have required the government to bear the burden of proving flight risk or danger by clear and convincing evidence. *Rodrigo A. Paz v. Wofford*, No. 1:25-CV-00986-KES-CDB (HC), 2025 WL 2420390, at *7 (E.D. Cal. Aug. 21, 2025) (collecting cases placing the burden on the Government to prove danger and flight risk at

the court ordered bond hearing).

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Violation of the Fifth Amendment: Substantive Due Process

135. Mr. Flores Jimenez re-alleges and incorporates by reference the paragraphs above.

136. 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.

137. The Government has two legitimate interests that may be served by civil immigration detention: preventing flight from removal proceedings and protecting the community from danger.

138. Due process prohibits the Government from punishing people in civil detention. Due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is detained. Civil custody that is excessively prolonged in relation to the Government’s interest is unconstitutionally punitive. When a civil restriction is excessive in relation to a governmental interest, or the government could accomplish its interests through less restrictive means, the restriction is unconstitutionally punitive.

139. Mr. Flores Jimenez does not pose a danger or a flight risk.

140. Mr. Flores Jimenez’s detention is excessive in relation to any legitimate government interest, which would be amply satisfied by his release on appropriate conditions, and is thus unconstitutionally punitive. For these reasons, Mr. Flores Jimenez’s ongoing prolonged detention violates his right to due process.

SECOND CLAIM FOR RELIEF

Violation of the Fifth Amendment: Procedural Due Process

141. Mr. Flores Jimenez re-alleges and incorporates by reference the paragraphs above.

142. 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.

143. Mr. Flores Jimenez’s detention has become prolonged as he has been detained for more than 33 months and faces months, if not years, of continued detention while his petition for

review is adjudicated and potentially remanded to the agency for further proceedings.

144. Mr. Flores Jimenez's ongoing prolonged detention without an individualized bail hearing at which the Government has established clear and convincing evidence of flight risk or danger (in consideration of alternatives to detention) violates his due process rights.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- 1) Assume jurisdiction over this matter;
- 2) Declare that Mr. Flores Jimenez's ongoing prolonged detention violates the Due Process Clause of the Fifth Amendment;
- 3) Issue a Writ of Habeas Corpus and order Respondents to immediately release Mr. Flores Jimenez- from DHS's physical custody.
- 4) In the alternative, hear and determine the facts, as described in 28 U.S.C. § 2243, at a prompt bail hearing before this Court, evaluate Mr. Flores Jimenez's ability to pay in setting bond, and consider alternative conditions of release;
- 5) Enjoin Respondents from causing Mr. Flores Jimenez any greater harm during the pendency of this litigation and immigration court case, such as by transferring him away from his counsel;
- 6) Award Petitioner reasonable attorneys' fees, costs, and other disbursements in this action permitted under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412, and on any other basis justified under law;
- 7) Grant such further relief as the Court deems just and proper.

Respectfully submitted on August 29, 2025,

/s/ Brynna Bolt

Brynna Bolt

Pro Bono Attorney for Petitioner