

1 Name / Nombre: *Zhumadylov, Alybek Bekkuluevich*

2 A Number / Número A: 

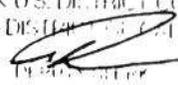
3 Address / Dirección: *Golden State Annex, 611 Frontage Rd, Marland, CA 93250*

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5 **PRO SE**

SEP 08 2025

6 **UNITED STATES DISTRICT COURT**
7 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

CLERK U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA


9 *Zhumadylov, Alybek*
10 *Bekkuluevich*
11 [Full Name / Nombre Completo]

1:25-cv-01161-EPG-(HC)

12 (A# 

Petitioner,

v.

Case No. _____

16 Warden of the *Golden State Annex*
17 Detention Facility, Current or Acting Field
18 Office Director, San Francisco Field Office,
19 United States Immigration and Customs
20 Enforcement; Current or Acting Director,
21 United States Immigration and Customs
22 Enforcement; Current or Acting Secretary,
23 United States Department of Homeland
24 Security; and Current or Acting United States
25 Attorney General,

Petition for Writ of Habeas Corpus

RECEIVED

SEP 08 2025

Respondents.

CLERK U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____
DEPUTY CLERK

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

Petitioner respectfully petitions this Honorable Court for a writ of habeas corpus to
remedy Petitioner's unlawful detention by Respondents, as follows:

INTRODUCTION

1
2 1. Petitioner¹ is currently detained by Immigration and Customs Enforcement
3 (“ICE”) at the Golden State Annex [escriba el nombre del centro de detención
4 *donde está detenido*] detention center pending removal proceedings.

5 2. Petitioner has been detained in immigration custody for over 9
6 [escriba el número de meses que ha estado detenido] months even though no neutral
7 decisionmaker—whether a federal judge or immigration judge (“IJ”)—has conducted a hearing
8 to determine whether this lengthy incarceration is warranted based on danger or flight risk.

9 3. Petitioner’s prolonged detention without a hearing on danger and flight risk
10 violates the Due Process Clause of the Fifth Amendment.

11 4. Petitioner therefore respectfully requests that this Court issue a writ of habeas
12 corpus, determine that Petitioner’s detention is not justified because the government has not
13 established by clear and convincing evidence that Petitioner presents a risk of flight or danger in
14 light of available alternatives to detention, and order Petitioner’s release, with appropriate
15 conditions of supervision if necessary, taking into account Petitioner’s ability to pay a bond.

16 5. Alternatively, Petitioner requests that the Court issue a writ of habeas corpus and
17 order Petitioner’s release within 30 days unless Respondents schedule a hearing before an IJ
18 where: (1) to continue detention, the government must establish by clear and convincing
19 evidence that Petitioner presents a risk of flight or danger, even after consideration of alternatives
20 to detention that could mitigate any risk that Petitioner’s release would present; and (2) if the
21 government cannot meet its burden, the IJ shall order Petitioner’s release on appropriate
22 conditions of supervision, taking into account Petitioner’s ability to pay a bond.

23
24 
25 ¹ Petitioner respectfully requests that the Court use his initials, rather than his full last name, in
26 any opinion in his case, as suggested by the Committee on Court Administration and Case
27 Management of the Judicial Conference of the United States. See Memorandum Re: Privacy
28 Concern Regarding Social Security & Immigration Opinions (May 1, 2018), available at
https://www.uscourts.gov/sites/default/files/18-cv-1-suggestion_cacm_0.pdf; see also *Jorge M.F.*
v. Jennings, 534 F. Supp. 3d 1050 n.1 (N.D. Cal. Apr. 14, 2021).

JURISDICTION

1
2 6 Petitioner is detained in the custody of Respondents at *Golden State Annex*
3 [*escriba el nombre del centro de detención donde está detenido*] detention center.

4 7. This action arises under the Due Process Clause of the Fifth Amendment of the
5 U.S. Constitution. Jurisdiction is proper under 28 U.S.C. §§ 1331 (federal question), 2241
6 (habeas corpus); U.S. Const. art. I, § 2; (Suspension Clause); and 5 U.S.C. § 702 (Administrative
7 Procedure Act. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et*
8 *seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C.
9 § 1651.

10 8. Congress has preserved judicial review of challenges to prolonged immigration
11 detention. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 839-841 (2018) (holding that 8 U.S.C.
12 §§ 1226(e), 1252(b)(9) do not bar review of challenges to prolonged immigration detention); *see*
13 *also id.* at 876 (Breyer, J., dissenting). (“8 U.S.C. § 1252(b)(9) . . . by its terms applies only with
14 respect to review of an order of removal”) (internal quotation marks and brackets omitted).

15 **VENUE**

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

18 **REQUIREMENTS OF 28 U.S.C. § 2243**

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

24 11. Courts have long recognized the significance of the habeas statute in protecting
25 individuals from unlawful detention. The Great Writ affords “*a swift and imperative remedy* in
26 all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis
27
28

1 added); *see also* *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (explaining that habeas statute
2 requires expeditious determination of petitions).

3 **PARTIES**

4 12. Petitioner is a noncitizen currently detained by Respondents pending ongoing
5 removal proceedings.

6 13. Respondent Warden of the *Golden State Annex* [escriba el nombre del centro
7 de detención donde está detenido] Detention Facility is Petitioner's immediate custodian at the
8 facility where Petitioner is detained. *See Doe*, 108 F.4th at 1194-97.

9 14. Respondent Secretary of the U.S. Department of Homeland Security ("DHS"), an
10 agency of the United States, is responsible for the administration of the immigration laws. 8
11 U.S.C. § 1103(a). They are a legal custodian of Petitioner. They are named in their official
12 capacity.

13 15. Respondent Acting or Current Attorney General of the United States is the most
14 senior official in the U.S. Department of Justice ("DOJ"). They have the authority to interpret the
15 immigration laws and adjudicate removal cases. They delegate this responsibility to the
16 Executive Office for Immigration Review ("EOIR"), which administers the immigration courts
17 and the Board of Immigration Appeals ("BIA"). They are named in their official capacity.

18 16. Respondent Acting or Current Field Office Director of the San Francisco ICE
19 Field Office is responsible for the San Francisco Field Office of ICE with administrative
20 jurisdiction over Petitioner's case. They are a legal custodian of Petitioner and are named in their
21 official capacity.

22 17. Respondent Acting or Current Director of ICE is responsible for ICE's policies,
23 practices, and procedures, including those relating to the detention of immigrants. They are a
24 legal custodian of Petitioner and are named in their official capacity.

25 **STATEMENT OF FACTS**

26 18. Petitioner is a noncitizen currently detained by Respondents pending immigration
27 removal proceedings. Petitioner is pursuing the following claims in removal proceedings [escriba
28

1 todos los aplicaciones de alivio que usted esta presentando en su caso de deportacion]:

2 Asylum, Withholding of Removal, and Convention Against
3 Torture

4
5 19. Petitioner has been detained in DHS custody since 11/2024
6 [escriba el mes y año en que comenzó su detención por ICE].

7 20. Petitioner has not been provided a bond hearing before a neutral decisionmaker to
8 determine whether their prolonged detention is justified based on danger or flight risk.

9 21. Pursuant to 8 U.S.C. § 1226(c), the Immigration Court lacks jurisdiction and
10 authority to provide Petitioner with a bond hearing to determine whether Petitioner's detention is
11 justified. There is no statutory or regulatory pathway for Petitioner to seek a bond hearing before
12 a neutral decisionmaker.

13 22. Absent intervention by this Court, Petitioner cannot and will not be provided with
14 a bond hearing by a neutral decisionmaker to assess the propriety of Petitioner's continued
15 detention.

16 23. Additional facts that support Petitioner's entitlement to relief are [escriba datos
17 adicionales sobre su detención que desee que el juez sepa]:

18 I have asked for bond hearing on 02/25/2025, and the
19 Court decision was that court does not has the
20 jurisdiction over granting the bond.

21 On 08/22/2025 I had my individual hearing, and
22 after one week, judge signed a written decision,
23 that "Withholding of Removal" has been granted,
24 but DHS reserved for appeal.

25 I'm detained for 9 months, and I'm suffering from
26 several medical issues. I can be detained continuously
27 if DHS will put an appeal, and my detention will

1 be prolonged for ~ 5-7 months.

2 I have problems with heart and blood pressure.

3 Also, I have allergy and my whole body is covered

4 in white spots. I'm always asking for help from

5 facility medical staff, and they giving me pills

6 for high blood pressure and ointment against

7 allergy, but my pressure keeps being high, and

8 ointment doesn't help at all. I'm waiting for

9 off-site hospital appointment, one month past, and

10 I have no information about when that

11 appointment will be.

12 I don't have any criminal record, as I have never

13 violated any law and I have documents as

14 a proof of that.

15 I feel depressed because of my prolonged

16 detention, conditions of that detention, and harsh

17 attitude from facility staff. I'm very tired of

18 being a prisoner, I'm exhausted, I'm not sleeping

19 well because of stressful mood, I want

20 to live a normal, social life, my desire is

21 to be helpful for society. I'm ready to get

22 a monitoring upon my release.

23 LEGAL BACKGROUND

24 24. "It is well established that the Fifth Amendment entitles [noncitizens] to due
25 process of law in deportation proceedings." *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting

26 *Reno v. Flores*, 507 U.S. 292, 306 (1993)). "Freedom from imprisonment—from government

27 custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the

1 Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see also id.* at 718
2 (Kennedy, J., dissenting) (“Liberty under the Due Process Clause includes protection against
3 unlawful or arbitrary personal restraint or detention.”). This fundamental due process protection
4 applies to all noncitizens, including both removable and inadmissible noncitizens. *See id.* at 721
5 (Kennedy, J., dissenting) (“[B]oth removable and inadmissible [noncitizens] are entitled to be
6 free from detention that is arbitrary or capricious”).

7 25. Due process requires “adequate procedural protections” to ensure that the
8 government’s asserted justification for physical confinement “outweighs the individual’s
9 constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690
10 (internal quotation marks omitted). In the immigration context, the Supreme Court has
11 recognized only two valid purposes for civil detention—to mitigate the risks of danger to the
12 community and to prevent flight. *Id.*; *Demore*, 538 U.S. at 528.

13 26. Due process requires that the government provide bond hearings to noncitizens
14 facing prolonged detention. “The Due Process Clause foresees eligibility for bail as part of due
15 process” because “[b]ail is basic to our system of law.” *Jennings*, 138 S. Ct. at 862 (Breyer, J.,
16 dissenting) (internal quotation marks omitted). While the Supreme Court upheld the mandatory
17 detention of a noncitizen under Section 1226(c) in *Demore*, it did so based on the petitioner’s
18 concession of deportability and the Court’s understanding at the time that detentions under
19 Section 1226(c) are typically “brief.” *Demore*, 538 U.S. at 522 n.6, 528. Where a noncitizen has
20 been detained for a prolonged period or is pursuing a substantial defense to removal or claim to
21 relief, due process requires an individualized determination that such a significant deprivation of
22 liberty is warranted. *Id.* at 532 (Kennedy, J., concurring) (“[I]ndividualized determination as to
23 his risk of flight and dangerousness” may be warranted “if the continued detention became
24 unreasonable or unjustified”); *see also Jackson v. Indiana*, 406 U.S. 715, 733 (1972) (holding
25 that detention beyond the “initial commitment” requires additional safeguards); *McNeil v. Dir.*,
26 *Patuxent Inst.*, 407 U.S. 245, 249-50 (1972) (holding that “lesser safeguards may be appropriate”
27 for “short-term confinement”); *Hutto v. Finney*, 437 U.S. 678, 685-86 (1978) (holding that, in the
28

1 Eighth Amendment context, “the length of confinement cannot be ignored in deciding whether
2 [a] confinement meets constitutional standards”); *Reid v. Donelan*, 17 F.4th 1, 7 (1st Cir.
3 2021) (holding that “the Due Process Clause imposes some form of reasonableness limitation
4 upon the duration of detention” under section 1226(c)) (internal quotation marks omitted).

5
6 **A. Detention That Exceeds Six Months Without A Bond Hearing Is Unconstitutional.**

7 27. Detention without a bond hearing is unconstitutional when it exceeds six months.
8 *See Demore*, 538 U.S. at 529-30 (upholding only “brief” detentions under Section 1226(c),
9 which last “roughly a month and a half in the vast majority of cases in which it is invoked, and
10 about five months in the minority of cases in which the [noncitizen] chooses to appeal”);
11 *Zadvydas*, 533 U.S. at 701 (“Congress previously doubted the constitutionality of detention for
12 more than six months.”); *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1091 (9th Cir. 2022) (“[O]nce
13 the [noncitizen] has been detained for approximately six months, continuing detention becomes
14 prolonged” (cleaned up) (quoting *Diouf v. Napolitano*, 634 F.3d 1081, 1091 (9th Cir. 2011)));
15 *Rodriguez v. Nielsen*, Case No. 18-CV-04187-TSH, 2019 WL 7491555, at *6 (N.D. Cal. Jan. 7,
16 2019) (“[D]etention becomes prolonged after six months and entitles [Petitioner] to a bond
17 hearing”).

18 28. The recognition that six months is a substantial period of confinement—and is the
19 time after which additional process is required to support continued incarceration—is deeply
20 rooted in our legal tradition. With few exceptions, “in the late 18th century in America crimes
21 triable without a jury were for the most part punishable by no more than a six-month prison
22 term.” *Duncan v. Louisiana*, 391 U.S. 145, 161 & n.34 (1968). Consistent with this tradition, the
23 Supreme Court has found six months to be the limit of confinement for a criminal offense that a
24 federal court may impose without the protection afforded by jury trial. *Cheff v. Schnackenberg*,
25 384 U.S. 373, 380 (1966) (plurality opinion). The Court has also looked to six months as a
26 benchmark in other contexts involving civil detention. *See McNeil v. Dir., Patuxent Inst.*, 407
27 U.S. 245, 249, 250-52 (1972) (recognizing six months as an outer limit for confinement without
28

1 individualized inquiry for civil commitment). The Court has likewise recognized the need for
2 bright line constitutional rules in other areas of law. See *Maryland v. Shatzer*, 550 U.S. 98, 110
3 (2010) (holding that 14 days must elapse following invocation of *Miranda* rights before re-
4 interrogation is permitted); *Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 55-56 (1991) (holding
5 that a probable cause hearing must take place within 48 hours of warrantless arrest).

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

8 29. Petitioner's detention, without *any* individualized review, is unreasonable under
9 the *Mathews v. Eldridge* due process test. Alternatively, Petitioner prevails under the multi-factor
10 reasonableness test the Third Circuit adopted in *German Santos v. Warden Pike Correctional*
11 *Facility*, 965 F.3d 203, 211 (3d Cir. 2020).

12 30. Each year, thousands of noncitizens are incarcerated for lengthy periods pending
13 the resolution of their removal proceedings. See *Jennings*, 138 S. Ct. at 860 (Breyer, J.,
14 dissenting) (observing that class members, numbering in the thousands, had been detained "on
15 average one year" and some had been detained for several years). For noncitizens who have
16 some criminal history, their immigration detention often dwarfs the time spent in criminal
17 custody, if any. *Id.* ("between one-half and two-thirds of the class served [criminal] sentences
18 less than six months").

19 31. Petitioner faces severe hardships while detained by ICE. Petitioner is held in a
20 locked down facility, with limited freedom of movement and access to Petitioner's family or
21 support network: "[T]he circumstances of their detention are similar, so far as we can tell,
22 to those in many prisons and jails." *Jennings*, 138 S. Ct. at 861 (Breyer, J., dissenting); accord
23 *Chavez-Alvarez v. Warden York Cnty. Prison*, 783 F.3d 469, 478 (3d Cir. 2015); *Ngo v. INS*, 192
24 F.3d 390, 397-98 (3d Cir. 1999); *Sopo v. U.S. Att'y Gen.*, 825 F.3d 1199, 1218, 1221 (11th Cir.
25 2016). "And in some cases the conditions of their confinement are inappropriately poor"
26 including, for example, "invasive procedures, substandard care, and mistreatment, *e.g.*,
27 indiscriminate strip searches, long waits for medical care and hygiene products, and, in the case
28

1 of one detainee, a multiday lock down for sharing a cup of coffee with another detainee.”

2 *Jennings*, 138 S. Ct. at 861 (Breyer, J., dissenting) (citing Press Release, Off. of Inspector Gen.,

3 Dept. of Homeland Sec., *DHS OIG Inspection Cites Concerns With Detainee Treatment and*

4 *Care at ICE Detention Facilities* (Dec. 14, 2017)); see also Tom Dreisbach, *Government's own*

5 *experts found 'barbaric' and 'negligent' conditions in ICE detention*, NPR (Aug. 16, 2023, 5:01

6 AM) (reporting on the “‘negligent’ medical care (including mental health care), ‘unsafe and

7 filthy’ conditions, racist abuse of detainees, inappropriate pepper-spraying of mentally ill

8 detainees and other problems that, in some cases, contributed to detainee deaths” contained in

9 inspection reports prepared by experts from the Department of Homeland Security’s Office for

10 Civil Rights and Civil Liberties after examining detention facilities between 2017 and 2019).

11 Individuals at Golden State Annex Detention Facility have described receiving food

12 contaminated with insects (including cockroaches, flies, and spiders), hair, and other foreign

13 objects. See California Collaborative for Immigrant Justice, *Starving for Justice: The Denial of*

14 *Proper Nutrition in Immigration Detention*, at p. 7 (April 2022), available at

15 https://www.ccjjustice.org/files/ugd/733055_c43b1cbbdda341b894045940622a6dc3.pdf. At

16 Mesa Verde Detention Facility, over 80% of detained individuals who responded to one survey

17 said they had received expired food. *Id.*

18 32. The *Mathews* test for procedural due process claims balances: (1) the private interest

19 threatened by governmental action; (2) the risk of erroneous deprivation of such interest

20 and the value of additional or substitute safeguards; and (3) the government interest.

21 *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976); see also *Sho v. Current or Acting Field*

22 *Off. Dir.*, No. 1:21-CV-01812 TLN AC, 2023 WL 4014649, at *3 (E.D. Cal. June 15,

23 2023), *report and recommendation adopted*, No. 1:21-CV-1812-TLN-AC, 2023 WL

24 4109421 (E.D. Cal. June 21, 2023) (applying *Mathews* factors to a habeas petitioner’s

25 due process claims and collecting cases doing the same). Here, each factor weighs in

26 Petitioner’s favor, requiring this Court to promptly hold a hearing to evaluate whether the

27 government can justify their ongoing detention.

28

1 33. First, Petitioner indisputably has a weighty interest in their liberty, the core
2 private interest at stake here. *Zadydas*, 533 U.S. at 690 (“Freedom from imprisonment. lies at
3 the heart of the liberty [the Due Process Clause] protects.”). Petitioner, who is being held in
4 “incarceration-like conditions,” has an overwhelming interest here, regardless of the length of his
5 immigration detention, because “any length of detention implicates the same” fundamental
6 rights. *Rajnish v. Jennings*, No. 3:20-cv-07819-WHO, 2020 WL 7626414, at *6 (N.D. Cal. Dec.
7 22, 2020).

8 34. Second, Petitioner will suffer the erroneous risk of deprivation of their liberty
9 without an individualized evidentiary hearing. The risk of erroneous deprivation of their liberty
10 is high, as they have been detained since 11/2024 [escriba el mes y año en
11 que comenzó su detención por ICE] without any evaluation of whether the government can
12 justify detention under their individualized circumstances. “[T]he risk of an erroneous
13 deprivation of liberty in the absence of a hearing before a neutral decisionmaker is substantial.”
14 *Diouf*, 634 F.3d at 1092. Conversely, “the probable value of additional procedural safeguards—
15 an individualized evaluation of the justification for his detention—is high, because Respondents
16 have provided virtually no procedural safeguards at all.” *Jimenez v. Wolf*, No. 19-cv-07996-NC,
17 2020 WL 510347, *3 (N.D. Cal. Jan. 30, 2020) (granting habeas petition for person who had
18 been detained for one year without a bond hearing).

19 35. Third, the government’s interest is very low in continuing to detain Petitioner
20 without providing any neutral review. See *Mathews*, 424 U.S. at 335. The specific interest at
21 stake here is not the government’s ability to continue to detain Petitioner, but rather the
22 government’s ability to continue to detain them for months on end without any individualized
23 review. See *Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 964 (N.D. Cal. 2019); *Henriquez v.*
24 *Garland*, No. 5:22-CV-00869-EJD, 2022 WL 2132919, at *5 (N.D. Cal. June 14, 2022). The
25 cost of providing an individualized inquiry is minimal. See *Henriquez*, 2022 WL 2132919, at *5.
26 The government has repeatedly conceded this fact. See *Lopez Reyes v. Bonnar*, 362 F. Supp. 3d
27 762, 777 (N.D. Cal. 2019); *Singh v. Barr*, 400 F. Supp. 3d 1005, 1021 (S.D. Cal. 2019);
28

1 *Marroquin Ambriz*, 420 F. Supp. 3d at 964.

2 36. In sum, the *Mathews* factors establish that Petitioner is entitled to an evidentiary
3 hearing before a neutral adjudicator. Unsurprisingly, courts applying these standards in this
4 District and Circuit have repeatedly held that prolonged detention without a hearing before a
5 neutral adjudicator violates procedural due process for individuals who were held under the same
6 detention statute. See, e.g., *Romero Romero v. Wolf*, No. 20-CV-08031-TSH, 2021 WL 254435,
7 at *2, *5 (N.D. Cal. Jan. 26, 2021) (holding that the petitioner's detention under § 1226(c) of just
8 over one year without a custody hearing was "not compatible with due process" and granting
9 habeas); *Jimenez*, 2020 WL 510347, at *1, *2, *4 (holding that the petitioner's detention under §
10 1226(c) of just over one year without a custody hearing violated his due process rights and
11 granting habeas); *Gonzalez v. Bonnar*, No. 18-CV-05321-JSC, 2019 WL 330906, at *1, *5 (N.D.
12 Cal. Jan. 25, 2019) (holding that the petitioner's detention under § 1226(c) for just over one year
13 without a custody hearing violates his due process rights and granting habeas). This Court should
14 so hold as well.

15 37. *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022), does not disturb this
16 result. In *Rodriguez Diaz*, the Ninth Circuit applied the *Mathews* test to hold that the detention of
17 a noncitizen detained under a different detention statute, 8 U.S.C. § 1226(a), did not violate
18 procedural due process. 53 F.4th at 1195. Unlike § 1226(c), § 1226(a) mandates that detained
19 individuals receive an individualized bond hearing at the outset of detention and provides for
20 further bond hearings upon a material change in circumstances. See 8 C.F.R. § 1003.19E. The
21 panel's decision in *Rodriguez Diaz* was predicated on the immediate and ongoing availability of
22 this administrative process under § 1226(a). 53 F.4th at 1202 ("Section 1226(a) and its
23 implementing regulations provide extensive procedural protections that are unavailable under
24 other detention provisions . . ."). Unlike the petitioner in *Rodriguez Diaz*, Petitioner has no
25 statutory access to individualized review of his detention.

26 38. Alternatively, courts that apply a reasonableness test have considered four non-
27 exhaustive factors in determining whether detention is reasonable. *German Santos v. Warden*
28

1 *Pike Cnty. Corr. Facility*, 965 F.3d 203, 210-22 (3d Cir. 2020). The reasonableness inquiry is
2 “highly fact-specific.” *Id.* at 210. “The most important factor is the duration of detention.” *Id.* at
3 211; see also *Gonzalez v. Bonnar*, No. 18-CV-05321-JSC, 2019 WL 330906, at *1, *5 (N.D.
4 Cal. Jan. 25, 2019) (concluding that the petitioner’s detention under § 1226(c) for just over one
5 year without a custody hearing weighed strongly in favor of finding detention unreasonable, and
6 violated his due process rights and granting habeas). Duration is evaluated along with “all the
7 other circumstances,” including (1) whether detention is likely to continue, (2) reasons for the
8 delay, and (3) whether the conditions of confinement are meaningfully different from criminal
9 punishment. *Id.* at 211.

10 39. As noted, Petitioner has been detained for a substantial length of time, *supra* ¶ 20
11 and Petitioner’s detention is likely to continue as Petitioner asserts their right to seek
12 immigration relief, *supra* ¶ 19. Noncitizens should not be punished for pursuing “legitimate
13 proceedings” to seek relief. See *Masood v. Barr*, No. 19-CV-07623-JD, 2020 WL 95633, at *3
14 (N.D. Cal. Jan. 8, 2020) (“[I]t ill suits the United States to suggest that [Petitioner] could shorten
15 his detention by giving up these rights and abandoning his asylum application.”). Thus, courts
16 should not count a continuance against the noncitizen when they obtained it in good faith to
17 prepare their removal case, including efforts to obtain counsel. See *Hernandez Gomez*, 2023 WL
18 2802230, at *4 (“The duration and frequency of these requests [for continuances] do not
19 diminish his significant liberty interest in his release or his irreparable injury of continued
20 detention without a bond hearing.”). Moreover, Petitioner’s confinement and experiences at a
21 facility operated by a private, for-profit prison contractor, demonstrate that their conditions of
22 confinement are not meaningfully different from those of criminal punishment. See *supra* ¶ 10,
23 24, 32.

24 **C. At Any Hearing, The Government Must Justify Ongoing Detention By Clear
25 And Convincing Evidence.**

26 40. At a bond hearing, due process requires certain minimum protections to ensure
27 that a noncitizen’s detention is warranted: the government must bear the burden of proof by
28

1 clear and convincing evidence to justify continued detention, taking into consideration available
2 alternatives to detention; and, if the government cannot meet its burden, the noncitizen's ability
3 to pay a bond must be considered in determining the appropriate conditions of release.

4 41. To justify prolonged immigration detention, the government must bear the
5 burden of proof by clear and convincing evidence that the noncitizen is a danger or flight risk.
6 See *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011); *Aleman Gonzalez v. Barr*, 955 F.3d
7 762, 781 (9th Cir. 2020), *rev'd on other grounds by Garland v. Aleman Gonzalez*, 142 S. Ct.
8 2057, 213 L. Ed. 2d 102 (2022) (“*Jennings’s* rejection of layering [the clear and convincing
9 burden of proof standard] onto § 1226(a) as a matter of statutory construction cannot . . .
10 undercut our constitutional due process holding in *Singh*.”); *Sho*, 2023 WL 4014649, at *5
11 (applying *Singh* and holding that the government shall bear the burden in a constitutionally
12 required bond hearing in the § 1226(c) context) *Doe v. Garland*, No. 3:22-CV-03759-JD, 2023
13 WL 1934509, at *2 (N.D. Cal. Jan. 10, 2023) (same); *Pham v. Becerra*, No. 23-CV-01288-
14 CRB, 2023 WL 2744397, at *7 (N.D. Cal. Mar. 31, 2023) (same); *Hernandez Gomez v.*
15 *Becerra*, No. 23-CV-01330-WHO, 2023 WL 2802230, at *4 (N.D. Cal. Apr. 4, 2023) (same);
16 *Martinez Leiva v. Becerra*, No. 23-CV-02027-CRB, 2023 WL 3688097, at *9 (N.D. Cal. May
17 26, 2023); *I.E.S. v. Becerra*, No. 23-CV-03783-BLF, 2023 WL 6317617, at *10 (N.D. Cal.
18 Sept. 27, 2023) (same); *Singh Grewal v. Becerra*, No. 23-CV-03621-JCS, 2023 WL 6519272, at
19 *8 (N.D. Cal. Oct. 4, 2023) (same); *Gomez v. Becerra*, No. 23-CV-03724-JCS, 2023 WL
20 6232236, at *9 (N.D. Cal. Sept. 25, 2023) (same); *Henriquez v. Garland*, No. 23-CV-01025-
21 AMO, 2023 WL 6226374, at *4 (N.D. Cal. Sept. 25, 2023) (same); *Rodriguez Picazo v.*
22 *Garland*, No. 23-CV-02529-AMO, 2023 WL 5352897, at *7 (N.D. Cal. Aug. 21, 2023) (same).

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

4 43. The requirement that the government bear the burden of proof by clear and
5 convincing evidence is also supported by application of the three-factor balancing test from
6 *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). First, “an individual’s private interest in
7 ‘freedom from prolonged detention’ is ‘unquestionably substantial.’” See *Rodriguez Diaz*, 53
8 F.4th at 1207 (citing *Singh*, 638 F.3d at 1208). Second, the risk of error is great where the
9 government is represented by trained attorneys and detained noncitizens are often unrepresented
10 and may lack English proficiency. See *Santosky v. Kramer*, 455 U.S. 745, 763 (1982) (requiring
11 clear and convincing evidence at parental termination proceedings because “numerous factors
12 combine to magnify the risk of erroneous factfinding” including that “parents subject to
13 termination proceedings are often poor, uneducated, or members of minority groups” and “[t]he
14 State’s attorney usually will be expert on the issues contested”). Moreover, detained noncitizens
15 are incarcerated in prison-like conditions that severely hamper their ability to obtain legal
16 assistance, gather evidence, and prepare for a bond hearing. See *supra* ¶ 32. Third, placing the
17 burden on the government imposes minimal cost or inconvenience to it, as the government has
18 access to the noncitizen’s immigration records and other information that it can use to make its
19 case for continued detention.

20 **D. Due Process Requires Consideration Of Alternatives To Detention.**

21 44. Due process also requires consideration of alternatives to detention. The primary
22 purpose of immigration detention is to ensure a noncitizen’s appearance during civil removal
23 proceedings. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related to this purpose if
24 there are alternative conditions of release that could mitigate risk of flight. See *Bell v. Wolfish*,
25 441 U.S. 520, 538–39 (1979) (civil pretrial detention may be unconstitutionally punitive if it is
26 excessive in relation to its legitimate purpose). ICE’s alternatives to detention program—the
27 Intensive Supervision Appearance Program—has achieved extraordinary success in ensuring
28

1 appearance at removal proceedings, reaching compliance rates close to 100 percent. *Hernandez*
2 *v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017) (observing that ISAP “resulted in a 99%
3 attendance rate at all EOIR hearings and a 95% attendance rate at final hearings”). Thus,
4 alternatives to detention must be considered in determining whether prolonged incarceration is
5 warranted.

6 45. Due process likewise requires consideration of a noncitizen’s ability to pay a
7 bond. “Detention of an indigent ‘for inability to post money bail’ is impermissible if the
8 individual’s ‘appearance at trial could reasonably be assured by one of the alternate forms of
9 release.’” *Hernandez*, 872 F.3d at 990 (quoting *Pugh v. Rainwater*, 572 F.2d 1053, 1058 (5th
10 Cir. 1978) (en banc)). Therefore, when determining the appropriate conditions of release for
11 people detained for immigration purposes, due process requires “consideration of financial
12 circumstances and alternative conditions of release.” *Id.*; see also *Martinez v. Clark*, 36 F.4th
13 1219, 1231 (9th Cir. 2022) (“While the government had a legitimate interest in protecting the
14 public and ensuring the appearance of noncitizens in immigration proceedings, we held [in
15 *Hernandez*] that detaining an indigent alien without consideration of financial circumstances
16 and alternative release conditions was ‘unlikely to result’ in a bond determination ‘reasonably
17 related to the government’s legitimate interests.’ (citation omitted).”).

18 CLAIM FOR RELIEF

19 **VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO** 20 **THE U.S. CONSTITUTION**

21 46. Petitioner re-alleges and incorporates by reference the paragraphs above.

22 47. The Due Process Clause of the Fifth Amendment forbids the government from
23 depriving any “person” of liberty “without due process of law.” U.S. Const. amend. V.

24 48. To justify Petitioner’s ongoing prolonged detention, due process requires that the
25 government establish, at an individualized hearing before a neutral decisionmaker, that
26 Petitioner’s detention is justified by clear and convincing evidence of flight risk or danger,
27 taking into account whether alternatives to detention could sufficiently mitigate that risk.
28

1 09.05.2025
2 Date [Fecha]

Zhumadylov, Alybek Bekkulovich
Printed Name [Nombre Impreso]

3 
4 Signature [Firma]

5
6 Detained in ICE Custody at: [check one / marque uno]

7 Mesa Verde Detention Facility, 425 Golden State Ave, Bakersfield, CA 93301

8 Golden State Annex, 611 Frontage Road, McFarland, CA 93250
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