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VARDAN GUKASIAN

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

VARDAN GUKASIAN, an individual,

Petitioner-Plaintiff,

v.

KRISTI NOEM, Acting Secretary of the Department of Homeland Security; TODD LYONS, Deputy Director and Senior Official Performing the Duties of Director, U.S. Immigration and Customs Enforcement; KENNETH PORTER, Assistant Field Office Director, U.S. Immigration and Customs Enforcement and Removal Operations; SDDO CLOYDE UMALI, Supervisory and Detention Officer, Immigration and Customs Enforcement, Enforcement and Removal Operations, Salt Lake City Field Office, Las Vegas Sub-Office, Detained Unit; TYLER ADAMS, Supervisory and Detention Officer, Immigration and Customs Enforcement, Enforcement and Removal Operations, Salt Lake City Field Office, Las Vegas Sub-Office, Detained Unit; NAPHCARE, INC.; and CAPTAIN FRANK D'AMICO, Captain of Corrections, Henderson Detention Center,

Respondents-Defendants.

Case No. 2:25-cv-01697

REPLY IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER

INTRODUCTION

1. Although this Reply addresses the arguments made by Federal Respondents, it is fundamentally more important to start by noting what Federal Respondents do not argue in their Response.

2. Federal Respondents do not dispute the plain fact of Mr. Gukasian's rapidly declining health, the abhorrent conditions of his confinement at Henderson Detention Center ("HDC"), the retaliation inflicted upon Mr. Gukasian by jail officials, the lack of language access services at HDC, or that his attorneys and their staff are routinely held in effective false imprisonment while attempting to counsel Mr. Gukasian at HDC. Indeed, Federal Respondents have adduced no evidence at all to rebut the dire nature of Mr. Gukasian's egregious human suffering taking place directly under their supervision and control.

3. Instead, Federal Respondents aver that despite the confluence of Mr. Gukasian's current conditions of confinement, the length of his detention, and his rapidly declining health, this Court must turn a blind eye to his pleas for help because existing law does not support his claims for relief. Specifically, Federal Respondents argue that the majority of Mr. Gukasian's claims are not cognizable when alleged in a petition for a writ of habeas corpus. And even as to the claim that is cognizable, Federal Respondents allege that Mr. Gukasian's due process right to be free from prolonged detention has not been violated. Finally, Federal Respondents' assert that even if Mr. Gukasian's due process rights have been violated, Mr. Gukasian cannot establish that the balance of the equities tip in his favor.

4. Federal Respondents are wrong on all counts. For one, Mr. Gukasian did not solely bring habeas claims under § 2241 when he initiated this lawsuit. Instead, the Petition-Complaint in this matter explicitly requests both injunctive and declaratory relief directly under the United States Constitution, invoking this Court's well-established power to issue injunctions to remediate violations of the federal constitution by government actors. (Dkt. No. 1 at 1, 8–9.) In the past, the Ninth Circuit has affirmed that identically-styled petition-complaints confer upon courts the authority to remedy constitutional violations through their broad equitable powers. *Roman v. Wolf*, 977 F.3d 935 (9th Cir. 2020); *Zepeda Rivas v. Jennings*, 845 F. App'x 530, 534–35 (9th Cir. 2021). Thus, whether or not Mr. Gukasian's

claims sound in habeas, they absolutely give rise to direct constitutional claims for injunctive relief against Federal Respondents—claims that he properly alleged in the initiating document in this case.

5. Secondly, whether or not his claims sound in habeas, Mr. Gukasian can and should prevail on the issue of his unconstitutionally prolonged detention. Federal Respondents' argument is precariously perched upon the holding in *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022), Ninth Circuit precedent that rejected an as-applied due process challenge for prolonged immigration detention. But Federal Respondents ignore that *Rodriguez Diaz* applied the *Mathews v. Eldridge* factors to individually assess that petitioner's due process claim, leaving the door wide open for other such challenges in the future. The *Mathews* test calls for the analysis of case-specific circumstances surrounding a petitioner's prolonged confinement, and Mr. Gukasian is plainly situated differently than the petitioner in *Rodriguez Diaz*. Specifically, Mr. Gukasian's continued confinement presents much stronger private interests—the most obvious of which is his right to be free from confinement that endangers his health and well-being—and weaker governmental interests than those at issue in *Rodriguez Diaz*, where the petitioner was a convicted felon who had exhausted all appeals of his final order of removal. When afforded the individual assessment of the *Mathews* factors in his case, Mr. Gukasian has established a likelihood of success on the merits of his prolonged detention claim.

6. Likewise, if Mr. Gukasian prevails on any of his claims, the extraordinary circumstances surrounding his conditions of detention and his extremely poor health warrant immediate release. That remedy—though used sparingly by courts—is warranted whether the Court invokes its powers under the writ of habeas corpus or its broad powers in equity to remedy constitutional harms by government officials. And while remedies should be tailored to the nature of the harm, Mr. Gukasian's health is (undisputedly) rapidly deteriorating, and Federal Respondents have not proposed any meaningful alternative plan that would assure this Court of his health and well-being. The nature of the remedy in this case must be immediate release in order to vindicate Mr. Gukasian's rights and spare him from the Kafkaesque and surreal possibility of dying in custody.

7. Finally, the remaining *East Bay*[1] factors plainly warrant an injunction in this case. Longstanding Ninth Circuit precedent has held that a movant who establishes a constitutional deprivation has established irreparable harm. Moreover, the same cases counsel that the public has a significant interest in avoiding the unlawful detention of immigration detainees, and that the balance of the equities tip sharply in favor of claimants subjected to (evidentiarily undisputed) unconstitutional practices by the government. For the reasons described below, this Court should grant the Motion and order Mr. Gukasian to be released on bail pending these proceedings.

ARGUMENT

I. The Appropriate Legal Standard Is Whether Mr. Gukasian Can Establish a Likelihood of Success on the Merits.

8. As an initial matter, Federal Respondents contest the standard of proof that governs Mr. Gukasian's Temporary Restraining Order. In particular, Federal Respondents contend that Mr. Gukasian must establish not just a likelihood of success on the merits, but that "the law and facts *clearly favor* [his] position." ("Federal Respondents' Response," Dkt. No. 11 at 8 (citing *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015)).) This is the case, Federal Respondents argue, because the relief Mr. Gukasian seeks would interrupt "the status quo" and constitute a mandatory injunction—as opposed to a prohibitory injunction—demanding a heightened showing. (*Id.*)

9. But Federal Respondents mischaracterize the nature of the relief that Mr. Gukasian seeks. Although prohibitory injunctions have historically been defined as "preserv[ing] the status quo" while mandatory injunctions "order[] a responsible party take action," it also true that "[t]he status quo refers to the last uncontested status which preceded the pending controversy." *Singh v. Andrews*, No. 1:25-CV-00801-KES-SKO (HC), 2025 WL 1918679, at *5 (E.D. Cal. July 11, 2025) (citing *Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 809 (9th Cir. 1963)) (quotations omitted). In cases by detainees alleging unconstitutional confinement, courts have held that the status quo "is the moment prior to the Petitioner's likely illegal detention." *Pinchi v. Noem*, No. 25-CV-05632-RMI (RFL), 2025 WL 1853763, at *3 (N.D. Cal. July 4, 2025); *see also Singh*, No. 1:25-CV-00801-KES-SKO (HC), 2025

[1] *East Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 668 (9th Cir. 2021).

WL 1918679, at *5. These cases reflect the common sense precept that "[a]n interpretation of status quo as the moment before filing a lawsuit but after alleged misconduct began would lead to absurd situations, in which plaintiffs could never bring suit once infringing conduct had begun." *Doe v. Noem*, No. 2:25-CV-00633-DGE, 778 F.Supp.3d 1151, 1166, (W.D. Wash. Apr. 17, 2025) (quoting *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000)).

10. Here, Mr. Gukasian has brought claims alleging that his confinement by Federal Respondents is unlawful. The status quo refers not to the status quo at the time of filing, but rather to the status quo prior to Federal Respondents' unconstitutional confinement of Mr. Gukasian. Consequently, by granting Mr. Gukasian's Motion and ordering his release, the Court would be doing little more than restoring the state of things as of "the last uncontested status which preceded the pending controversy." *See Singh*, No. 1:25-CV-00801-KES-SKO (HC), 2025 WL 1918679, at *5; *see also Kuzmenko v. Phillips,* No. 25-CV-00663, 2025 WL 779743, at *3 (E.D. Cal. Mar. 10, 2025) (granting a temporary restraining order requiring immediate release of the petitioner back to home confinement from custody as a restoration of the status quo). Because the relief sought by Mr. Gukasian is more accurately classified as a prohibitory—not mandatory—injunction, the Court should apply the less demanding "likelihood of success" standard to assess his claims.[2]

II. Mr. Gukasian Is Likely to Succeed on the Merits of All of His Claims.

A. Whether or Not Habeas Jurisdiction Lies for Mr. Gukasian's Constitutional Claims Is Irrelevant Because Mr. Gukasian Also Sought Injunctive Relief Directly Under the Constitution in the Complaint.

11. After addressing the legal standard at issue in the Motion, Federal Respondents devote a significant portion of their response to arguing that the Court lacks habeas jurisdiction over

[2] Even if the Court's action here would constitute a mandatory injunction, Mr. Gukasian contends that—between the uncontested evidence presented of his declining health, his lack of access to counsel, and his poor conditions of confinement—he has made a sufficient showing in both his Motion and this Reply to meet the heightened standard required to issue a mandatory injunction. *See Castellon v. Kaiser*, No. 1:25-CV-00968 JLT EPG, 2025 WL 2373425, at *7 n.6 (E.D. Cal. Aug. 14, 2025) ("[A] mandatory is permissible when 'extreme or very serious damage will result' that is 'not capable of compensation in damages,' and the merits of the case are not 'doubtful.'") (quoting *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879 (9th Cir. 2009)).

Mr. Gukasian's claims regarding the conditions of his confinement because such claims do not sound in habeas. (Federal Respondents' Response at 8-10.) Although it is largely beside the point (because the Court, of course, has already ruled on the issue), Mr. Gukasian respectfully disagrees with Federal Respondents' position. For one, as Federal Respondents themselves point out, neither the Supreme Court nor the Ninth Circuit have ruled on the question of whether a § 2241 habeas claim challenging conditions of confinement is available as a remedy to federal immigration detainees in federal custody. Instead, courts have largely focused on whether convicted prisoners—who have ample alternative channels for legal relief—are entitled to challenge conditions of confinement using a petition for a writ of habeas corpus. *Pinson v. Carvajal*, 69 F.4th 1059, 1072 (9th Cir. 2023); *see also Nettles v. Grounds*, 830 F.3d 922, 930 (9th Cir. 2016) ("We read [Supreme Court cases] as strongly suggesting that habeas is available only *for state prisoner claims* that lie at the core of habeas (and is the exclusive remedy for such claims), while § 1983 is the exclusive remedy *for state prisoner claims* that do not lie at the core of habeas.") (emphasis added); *but see Doe v. Garland*, 109 F.4th 1188 (9th Cir. 2024) (citing the distinction between core habeas and non-core habeas claims in an immigration case, but making no ruling as to their contours in immigration cases). Indeed, without the remedy of habeas corpus, federal detainees like Mr. Gukasian—who cannot avail themselves of § 1983 relief because they are not held under the color of state law—may sometimes be left with limited legal recourse to the deprivation of their rights while in federal custody. *See A Textual Argument for Challenging Conditions of Confinement Under Habeas*, 135 Harv. L. Rev. 1397 (Mar. 2022), available at https://harvardlawreview.org/print/vol-135/a-textual-argument-for-the-challenging-conditions-of-confinement-under-habeas/ ("Given the limitations of [] other avenues [of relief], habeas may sometimes be the only way for a federal prisoner [or detainee] to challenge and remedy unlawful conditions of confinement.").

12. But setting aside the red herring offered by the Federal Respondents, Mr. Gukasian's claims do not hinge on whether § 2241 permits him to challenge the conditions of his confinement. Critically, Mr. Gukasian also alleged direct constitutional claims for injunctive (and declaratory) relief against Federal Respondents. In fact, Mr. Gukasian took great care to style the initiating document in this case as both a "Petition for Writ of Habeas Corpus *and Complaint for Injunctive and Declaratory*

Relief." (Dkt. No. 1 at 1 (emphasis added).) Mr. Gukasian named each Respondent as a "Respondent-Defendant," and Mr. Gukasian styled himself as a "Petitioner-Plaintiff." (*Id.* at 7.) Mr. Gukasian invoked 28 U.S.C. § 1331 as one of the jurisdictional bases for his claims, and he explicitly cited both *Ex Parte Young* and *Stimson* as authority for the action, each of which stand for the proposition that plaintiffs may seek injunctive relief against government officials to enjoin them from violating the constitution. (*Id.* at 8–9); *see also See Ex Parte Young*, 209 U.S. 123 (1907) and *Philadelphia Co. v. Stimson*, 223 U.S. 605, 620 (1912). In his prayer for relief, Mr. Gukasian requested the issuance of a writ of habeas corpus, "or alternatively, [] injunctive relief ordering Respondents to immediately release Petitioner, on the grounds that his continued detention violates the Due Process Clause and First Amendment[.]" (*Id.* at 30.)

13. In identical circumstances, where a plaintiff-petitioner has styled their initiating document as both a habeas petition and complaint for injunctive relief, the Ninth Circuit has ruled that the district court had jurisdiction to grant a preliminary injunction to remediate unconstitutional conditions of confinement regardless of whether such claims were cognizable under habeas corpus. *Roman v. Wolf*, 977 F.3d 935 (9th Cir. 2020). In *Roman*, noncitizen detainees brought a class action lawsuit challenging their conditions of confinement in Adelanto Immigration and Customs Enforcement Processing Center amidst the COVID-19 pandemic. *Id.* at 939. The detainees sought "declaratory and injunctive relief, as well as habeas relief." *Id.* In response, the government argued (much like it argues here) that "a district court on habeas review may not order… any [] injunctive relief[] to remedy unconstitutional conditions of confinement." *Id.* at 941.

14. But the Ninth Circuit held that it "need not reach that issue to resolve th[e] appeal because, separately from their habeas petition, [the] Plaintiffs brought a class action complaint for declaratory and injunctive relief seeking to remedy allegedly unconstitutional conditions at Adelanto" and that this separate request for relief "independently provided the district court jurisdiction to hear Plaintiffs' challenges and authority to grant the types of relief that Plaintiffs sought." *Id.* This was because "[c]ourts have long recognized the existence of an implied cause of action through which plaintiffs may seek equitable relief to remedy a constitutional violation." *Id.* (citation omitted). Moreover, *Roman* explicitly acknowledged that "an implied cause of action exists [under the

constitution] for Plaintiffs to challenge allegedly unconstitutional conditions of confinement." *Id.* (citing, among other cases, *Ziglar v. Abbasi*, 582 U.S. 120, 143 (2017)). Thus, *Roman* held that the Court had jurisdiction to issue an injunction in response to alleged violations of the Plaintiffs' due process rights due to their conditions of confinement.

15. The Ninth Circuit has since affirmed the ruling in *Roman* in an unpublished opinion. *Zepeda Rivas v. Jennings*, 845 F. App'x 530, 534–35 (9th Cir. 2021) ("The government argues that to the extent the plaintiffs' claims rely on habeas corpus, the district court lacked authority to remedy plaintiffs' conditions of confinement… As in *Roman I*, we need not decide whether a writ habeas corpus is the proper vehicle to pursue plaintiffs' claim because plaintiffs also brought a class action seeking declaratory and injunctive relief to remedy the condition."). District courts within this circuit have followed. *Ortega v. Kaiser*, No. 25-CV-05259-JST, 2025 WL 2243616, at *3 (N.D. Cal. Aug. 6, 2025); *see also Romero-Lorenzo v. Koehn*, No. CV-20-00901-PHX-DJH (DMF), 2021 WL 12299041, at *6 (D. Ariz. Feb. 19, 2021) ("[E]ven if the Court lacks jurisdiction under § 2241, Plaintiffs-Petitioners' claims for injunctive relief remain cognizable for review because [they] ha[ve] alternatively pleaded a cause of action under the Fifth… Amendment[] for injunctive and declaratory relief, over which the Court would have jurisdiction under 28 U.S.C. § 1331, as an equitable cause of action under the Constitution.") For the Court's edification, the complaint from *Roman* is attached as Exhibit 1 to this Reply. (*See* Exhibit 1.)

16. In sum, whether or not this Court has dismissed Mr. Gukasian's habeas claims against Federal Respondents, his direct constitutional claims seeking injunctive relief survive and certainly raise cognizable claims.[3] Accordingly, whether or not his claims sound in habeas, Mr. Gukasian reasserts that

[3] Because the Court directed Federal Respondents to narrow their response to only one of Mr. Gukasian's four claims, and if the Court does not grant Mr. Gukasian's claim for prolonged detention, Mr. Gukasian does not object to supplemental briefing from the parties on the discrete issue of whether Mr. Gukasian can show a likelihood of success on the merits of his other claims as direct constitutional claims. To the extent the Court clarifies that it has ruled that Mr. Gukasian's direct constitutional claims for injunctive and declaratory relief are also dismissed, Mr. Gukasian intends to seek reconsideration and clarification of the Court's order in a separate pleading. In any event, and as discussed more *infra*, this Court can still consider Mr. Gukasian's conditions of confinement and health as a factor in his favor in its *Mathews* assessment of his prolonged detention, in assessing whether

this Court has jurisdiction and the authority to grant him injunctive relief in response to Respondents' violations of his constitutional rights.

B. Mr. Gukasian Has Established a Due Process Violation from Prolonged Detention.

17. Federal Respondents next argue that Mr. Gukasian cannot establish a violation of due process from prolonged detention because he has not been detained for long enough and has sufficient procedural safeguards to guard against prolonged detention under § 1226(a). (Federal Respondents' Response at 10–12.) In support of this proposition, Federal Respondents primarily rely upon *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022). (*Id.* at 11.) Federal Respondents' reliance upon *Rodriguez Diaz* is misplaced.

18. Federal Respondents assert that Mr. Gukasian's plea for relief is foreclosed by *Rodriguez Diaz*. In *Rodriguez Diaz*, the Ninth Circuit rejected an immigration detainee's as-applied due process challenge to his 14-month prolonged detention pursuant to § 1226(a). *Rodriguez Diaz*, at 1213–14. The *Rodriguez Diaz* court applied the *Mathews v. Eldridge* factors to assess Rodriguez Diaz's claim, noting that, while assessing due process challenges, "the Ninth Circuit [has] regularly applied *Mathews* to due process challenges to removal proceedings." *Id.* at 1206 (citations omitted); *see also Mathews v. Eldridge*, 424 U.S. 319 (1976).[4] The *Mathews* test assesses an alleged deprivation of due process by government action utilizing a three-step balancing test:

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immediate release is warranted for a violation of his rights, and in determining the balance of the equities and hardships.

[4] While heavily suggesting its preference for using the test, the *Rodriguez Diaz* court assumed without deciding (over the government's objection) that the *Mathews* test was the proper vehicle to analyze the plaintiff's as-applied due process challenge to his prolonged detention under § 1226(a). *Rodriguez Diaz*, 53 F. 4th at 1207. Even in that case, however, the government failed to specifically articulate an alternative test to the *Mathews* test. *Id.* at 1206. District courts within the Ninth Circuit assessing claims of prolonged detentions since *Diaz* appear to universally apply the *Mathews* test to assess the validity of due process claims. *See, e.g.*, *Romero-Romero v. Wofford*, No. 1:24-CV-00944-SKO (HC), 2025 WL 391861, at *5 (E.D. Cal. Feb. 4, 2025) (applying *Mathews*); *Rosas v. Becerra*, No. 23-CV-04058-LB, 2023 WL 6541855, at *4 (N.D. Cal. Oct. 6, 2023) (same); *Grewal v. Becerra*, No. 23-CV-03621-JCS, 2023 WL 6519272, at *8 (N.D. Cal. Oct. 4, 2023) (same); *I.E.S. v. Becerra*, No. 23-CV-03783-BLF, 2023 WL 6317617, at *8 (N.D. Cal. Sept. 27, 2023) (same); *Jensen v. Garland*, No. 521CV01195CASAFM, 2023 WL 3246522, at *4 (C.D. Cal. May 3, 2023) (same). Thus, Mr. Gukasian asserts that the *Mathews* test is the correct vehicle to assess his prolonged detention claim.

> "*First*, the private interest that will be affected by the official action; *second*, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and *finally*, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail."

Rodriguez Diaz, 53 F.4th at 1207 (citing *Mathews*, 424 U.S. at 335) (quotations omitted) (emphasis in original).

19. *Rodriguez Diaz* went on to analyze the plaintiff's claim under the *Mathews* factors, noting that the plaintiff's sole stated interest was his right to be free from prolonged detention for a fourteen-month period—a private interest the court recognized was "unquestionably substantial." *Id.* at 1207 (citing *Singh v. Holder*, 638 F.3d 1196, 1208 (9th Cir. 2011)) (quotations omitted). But other than the plaintiff's right to be free from prolonged detention, the *Diaz* court recognized no other private interests at stake. *Id.* And as to that interest, the court warned that it "is important not to overstate the strength of Rodriguez Diaz's showing under the first *Mathews* factor, either," because Rodriguez Diaz had previously received multiple bond hearings and "most of [his] period of [] detention arose from the fact that he chose to challenge… [his] denial of immigration relief" via appeals and habeas petitions. *Id.* at 1207–08.

20. The other *Mathews* factors, the court found, weighed against Rodriguez Diaz. The government interest at stake was significant: the interest in "preventing aliens from 'remain[ing] in the United States in violation of our law.'" *Id.* at 1208 (quoting *Demore*, 538 U.S. at 518). The *Diaz* court emphasized that this was "especially true when it comes to determining whether removable aliens must be released on bond during the pendency of removal proceedings[,]" and especially true of an alien like Rodriguez Diaz—a multi-time violent felon—who had been previously convicted of crimes like spousal battery, burglary, and witness intimidation. *Id.* That Rodriguez Diaz's appeal of his removal order was

denied by the BIA made him an imminent risk of absconding,[5] and made the government's interest in detaining him one "of the highest order." *Id.*

21. Likewise, the *Rodriguez Diaz* court found that Rodriguez Diaz had sufficient procedural safeguards available to him under § 1226(a) given the circumstances of his case. The court noted that Rodriguez Diaz had a bond hearing shortly after he was taken into custody and that his bond was denied based on his gang affiliation. *Id.* at 1209. The court observed that after his prior drug conviction was vacated, Rodriguez Diaz sought a custody re-determination based on a change of circumstances, but the Immigration Judge ruled that its basis for detaining Rodriguez Diaz (his gang affiliation) was unaffected by the change. *Id.* Finally, the court pointed out that Rodriguez Diaz had benefited from other procedural protections on the merits of his claim, including a stay of removal. *Id.* Thus, the Ninth Circuit held that "on these facts, duration alone cannot sustain a due process challenge," in-part because "Rodriguez Diaz has already received far more process than the detainees in [other] cases[,] [a]nd he has not pointed to any individualized circumstances warranting additional procedures, or any unconstitutional failure of the § 1226(a) procedures in his case." *Id.* at 1212–13.

22. The *Rodriguez Diaz* court concluded by admonishing that although it was denying Rodriguez Diaz habeas relief, it "d[id] not foreclose all as-applied challenges to § 1226(a)'s procedures. Due process is a flexible concept that varies with the particular situation." *Id.* at 1213; *see also id.* at 1213–14 ("The government agrees that its position here does not mean detained aliens can never bring as-applied due process challenges to § 1226(a)."). Instead, the court explained that it was leaving the constitutional limits of prolonged detention for another day because Rodriguez Diaz had failed to demonstrate a due process violation in his own individual case. *Id.* at 1214.

23. Federal Respondents assert that because an 18-month period of detention in *Rodriguez Diaz* was insufficient to warrant a finding of a due process violation, the 7-month period in Mr. Gukasian's case must necessarily be insufficient to warrant relief. But Federal Respondents entirely ignore that the duration of detention was but one of several *Mathews* factors weighed by the court in

[5] Rodriguez Diaz's removal was prevented only by a stay issued by the Ninth Circuit. *Rodriguez Diaz*, 53 F.4th at 1194.

Rodriguez Diaz, which explicitly declined to foreclose future challenges to § 1226(a) or set any bright line rule as to the length of custody required to establish an unconstitutionally prolonged detention. For that matter, courts both before and after *Rodriguez Diaz* have found as-applied due process violations for prolonged confinement in the case of detainees who had been held for less than 18 months based on the varying circumstances of their confinement. *See, e.g.*, *Gao v. Larose*, No. 25-CV-2084-RSH-SBC, 2025 WL 2770633, at *5 (S.D. Cal. Sept. 26, 2025) (ten months); *Perera v. Jennings*, No. 21-CV-04136-BLF, 2021 WL 2400981, at *2 (N.D. Cal. June 11, 2021) (less than two months); *Rajnish v. Jennings*, No. 3:20-CV-07819-WHO, 2020 WL 7626414, at *1 (N.D. Cal. Dec. 22, 2020) (nine months). Put simply, the length of detention in *Rodriguez Diaz* does not control the outcome of Mr. Gukasian's individualized due process claim.

24. As stated explicitly by the Ninth Circuit, *Rodriguez Diaz* does not foreclose Mr. Gukasian from bringing his own as-applied challenge to the legality of his confinement based on the duration of his detention, his declining health, and his inability to adequately access his right to counsel and mount a defense. And unlike in *Rodriguez Diaz*, the *Mathews* factors in this case support a finding that Mr. Gukasian's prolonged detention is in violation of his due process rights.

25. *First*, Mr. Gukasian's private interests under the *Mathews* test are significant, if not paramount: in addition to being in custody for a prolonged period of time, Mr. Gukasian has experienced severely declining health, has enjoyed limited access to counsel and visitation, and has endured conditions more akin to punishment than civil detention due to Respondents' policies and custodial conditions. As laid out in his Motion and in his declaration, Mr. Gukasian has routinely been shuffled between jail cells and cell blocks with convicted inmates, pretrial detainees, and mentally-ill homeless people. As of now, he is isolated in a room by himself under medical observation. He has been served expired food, forced to wear blood-stained clothing, and confined inside without outdoor recreation for almost two months. He cannot see his family or friends in-person, and the only meaningful way for his attorneys to visit him is to see him in-person. His health has been horribly neglected, with staff at Henderson Detention Center illegally failing to provide him with language access services to understand his course of treatment and neglecting to send him to specialists to help determine the underlying causes

of his medical episodes. He has been hospitalized three times in the last four months after fainting spells and high blood pressure.

26. Thus, the private interest at stake in Mr. Gukasian's case is not simply that he will continue to be detained for a prolonged period (although that interest is no doubt substantial). Instead, the relevant private interest is whether Mr. Gukasian will continue to be detained in absolutely abhorrent conditions that deny him adequate access to counsel and that contribute to his declining health. *See Gao*, No. 25-CV-2084-RSH-SBC, 2025 WL 2770633, at *4 (finding that it weighed in petitioner's favor that his "conditions of confinement at Otay Mesa Detention Center are not dissimilar to criminal confinement"); *L.G. v. Choate*, 744 F. Supp. 3d 1172, 1182 (D. Colo. 2024) (weighing petitioner's declining mental health, punitive custodial conditions, and separation from his family under the private interest factor). Without intervention from this Court, Mr. Gukasian's health is so poor that he may die. Let there be no doubt: the government does not dispute this plain fact. Instead of searching for a legal fiction upon which to base an argument, the government might have simply endeavored to find a practical, real world solution; it should not be controversial to assert that is no greater private interest worth protecting than someone's right to live.

27. Moreover, unlike in *Rodriguez Diaz*, Mr. Gukasian's prolonged detention has not been the result of his repeated appeals and habeas petitions. Instead, his prolonged detention has simply been caused by his pursuit of immigration relief in the normal course of proceedings. At least one of the continuances in his underlying case came about because of a conflict with the court's schedule, and the remainder of his hearings were simply hearings that were necessary to present evidence. Thus, Mr. Gukasian's private interests in this case are far more substantial, weighty, and complex than the interest in being free from prolonged detention cited in *Rodriguez Diaz*.

28. *Second*, the government's own countervailing interest in this case is several magnitudes less than it was in *Rodriguez Diaz*. Notably, unlike Rodriguez Diaz, Mr. Gukasian has not exhausted his ability to contest removal. And importantly, Mr. Gukasian has no gang affiliation, and has never been convicted of any violent felonies. Thus, unlike in *Rodriguez Diaz*, Federal Respondents cannot cite the "obvious interest in 'protecting the public from dangerous criminal aliens.'" *Rodriguez Diaz*, at 1208 (quoting *Demore*, 538 U.S. at 515). In this case, the government's only apparent interest in detaining

Mr. Gukasian is the general interest in enforcing immigration laws present in any immigration case—an interest it can still enforce if Mr. Gukasian pursues his immigration claim out of custody. Without a more tailored government interest, this factor should weigh in favor of Mr. Gukasian. *Gao*, No. 25-CV-2084-RSH-SBC, 2025 WL 2770633, at *4 ("Asked whether the government had any particular interest in Petitioner's continued detention, Respondent's counsel referred to the government's general interest in the enforcement of immigration laws… [T]he lack of any specific governmental interest underlying his continued detention [] weigh[s] in favor of Petitioner.").

29. *Third*, and last, the procedures used in Mr. Gukasian's immigration case are not adequate to guard against the erroneous deprivation of his rights. Federal Respondents argue that because Mr. Gukasian can be (and was already) provided with a bail hearing, the right to appeal, and the right to apply for reconsideration, his rights have been procedurally vindicated. But the analysis is not so simple or circumscribed.

30. Initially, it is worth noting that Immigration Judges have limited jurisdiction, and are "powerless to remedy the conditions [of confinement]" to which a detainee is subjected. *Torres v. United States Dep't of Homeland Sec.*, 411 F. Supp. 3d 1036, 1049 (C.D. Cal. 2019) (citing EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, IMMIGRATION COURT PRACTICE MANUAL at 125 (rev'd June 10, 2013) for the proposition that "Immigration Judges have no jurisdiction over ... the conditions in the detention facility."). Thus, Mr. Gukasian's sole avenue of potential relief in his immigration proceedings is requesting redetermination of his release on bail.

31. To be sure, Mr. Gukasian has had access to a bail hearing and the right to appeal his bail determination—and has availed himself of those procedural safeguards. But despite the availability of those procedures, Mr. Gukasian does not have any assurance under the law that his current conditions of confinement, lack of attorney access, and poor health will serve as a basis to obtain reconsideration of the Immigration Judge's bail denial.

32. Importantly, the Immigration Judge in Mr. Gukasian's case has already ruled that he must remain detained because he poses a danger to the community. The Immigration Judge ruled that Mr. Gukasian was a danger because although it was a "genuine possibility" that his past (expunged) conviction and pending charges in Armenia were "fabricated accusations based on political retribution,"

Mr. Gukasian had failed to meet his burden of establishing that he was not a danger to the community. (Dkt. No. 11-5 at 6.) The Board of Immigration Appeals affirmed the Immigration Judge's finding and reasoning to detain Mr. Gukasian. (Dkt. No. 11-6 at 6.)

33. Section 1003.19(e) does permit Mr. Gukasian to seek further reconsideration of a bail decision by the Immigration Judge, but only "upon a showing that [his] circumstances have changed materially since the prior bond redetermination." 8 C.F.R. § 1003.19(e). In order to obtain a bond redetermination hearing, the material change of circumstance cited by Mr. Gukasian must pertain to either the alleged danger he poses to the community or to his risk of flight. *See Singh v. U.S. Immigr. & Customs Enf't*, No. CV H-22-3432, 2023 WL 3571958, at *1 (S.D. Tex. Apr. 26, 2023) ("[Petitioner's] convictions constitute a material change in circumstances… because they are a material change *relating to the question of whether petitioner is a danger*, and thus whether he is entitled to be released from immigration custody on bond.") (emphasis added). In a re-determination hearing, Mr. Gukasian bears the burden of proving by clear and convincing evidence that his release would not pose a danger, and that he is likely to appear for any future proceedings. *In Re Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006); *In Re Adeniji*, 22 I. & N. Dec. 1102, 1116 (BIA 1999); 8 C.F.R. § 1003.19(h)(3).

34. To prevail in the only form of relief procedurally available to him, Mr. Gukasian would have to establish that his change in circumstances—his worsening health, his poor conditions of confinement, and his lack of access to counsel—is relevant to the Immigration Judge's prior finding that he poses a danger to the community because of his alleged criminal behavior in Armenia. It is difficult to see how Mr. Gukasian could successfully make such an argument, given that his prolonged detention, lack of attorney access, declining health, and poor conditions of confinement have little-to-no bearing on his alleged criminal acts in Armenian court. Federal Respondents, on the other hand, do not explain how or why the Immigration Judge would be compelled to consider, let alone consider meaningfully, Mr. Gukasian's change in circumstances in a motion for bail redetermination given the Immigration Judge's prior ruling. Thus, while Mr. Gukasian certainly has the theoretical right to pursue vindication of his rights in the immigration procedures offered to him, the existing procedures available to him offer little hope of preventing an erroneous deprivation of his rights. *See L.G.*, 744 F. Supp. 3d at 1184 ("[T]he government makes much of the fact that Petitioner has a right to seek an additional bond hearing

if his circumstances materially change; however, it's possible… the IJ might deny the request for a new bond hearing if none of the circumstances by which the IJ based its decision has changed.").

35. In sum, on balance, the *Mathews* factors weigh in favor of Mr. Gukasian and a finding of unconstitutionally prolonged detention. In addition to being subjected to prolonged detention, Mr. Gukasian has been subjected to abhorrent detention conditions that have deprived him of access to counsel and destroyed his health to the point of multiple hospitalizations. Moreover, the government's interest in continuing to detain Mr. Gukasian is extremely limited given that he continues to fight his immigration case and given that—unlike the petitioner in *Rodriguez Diaz*—he has never been adjudicated guilty of a violent felony. Finally, the bail procedures available to Mr. Gukasian in his immigration case do not guarantee that his poor conditions of confinement and prolonged detention will be meaningfully considered by a judge given the current basis for his detention. Given the strong private interest Mr. Gukasian has in his release, and given the lack of countervailing government interests at stake, this Court should find that Mr. Gukasian has established a constitutional deprivation for prolonged detention under *Mathews*.

C. Having Established a Due Process Violation from His Prolonged Detention, Mr. Gukasian is Entitled to Immediate Release.

36. Having established a due process violation for prolonged detention, Mr. Gukasian is also entitled to the remedy of immediate release.

37. While some cases addressing prolonged detention in the constitutional sense remedy the petitioner's harm by granting an additional bond hearing or shifting the burden of proof at an immigration bail redetermination, "there is abundant authority that federal district judges in habeas corpus... proceedings have inherent power to admit applicants to bail pending the decision of their cases," *Cherek v. U.S.*, 767 F.2d 335, 337 (7th Cir. 1985). A grant of release requires a showing that the case is "extraordinary," "involv[es] special circumstances or [invokes] a high probability of success." *Land v. Deeds*, 878 F.2d 318, 318 (9th Cir. 1989).

38. Aside from its powers as a district court hearing a habeas corpus proceeding, this Court also has powers in equity to redress violations of the United States Constitution by government actors. *Roman*, 977 F.3d at 942 ("Once a [constitutional] right and a violation have been shown, the scope of a

district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies."). These powers in equity include "requir[ing] the release of [] detainees, if such a remedy [is] necessary to cure the alleged constitutional violations." *Id.*; *see Doe v. Becerra*, 732 F. Supp. 3d 1071, 1090 (N.D. Cal. 2024) (citing *Roman* and requiring government to craft proposed release plan for detainee due to unconstitutional confinement).

39. Mr. Gukasian has established entitlement to immediate release. For one, as argued in his initial Motion, Mr. Gukasian's dire health issues and unsafe conditions of confinement support a finding of special or extraordinary circumstances to release him pending these proceedings. *See Ozturk v. Trump*, 783 F. Supp. 3d 801, 812 (D. Vt. 2025) (releasing detainee based on First Amendment and Due Process violations because "the evidence before the Court showed that [the detainee's] health [] declined precipitously over the last six weeks, and she is at risk for needing emergency medical care, which may be difficult to obtain in detention"); *see also Leslie v. Holder*, 865 F. Supp. 2d 627, 639 (M.D. Pa. 2012) (finding detainee's prolonged length of detention and "cascading array of medical problems" established extraordinary circumstances warranting release on bail).

40. Similarly, much like the plaintiffs in *Roman*, Mr. Gukasian has established that he is entitled to traditional equitable relief because immediate release is necessary to cure the alleged constitutional violations in this case. *See Roman*, 977 F.3d at 942. Mr. Gukasian's health has been and remains in peril while in custody. He has been hospitalized three times in four months with serious heart issues, and has experienced fainting spells and other symptoms of extremely high-blood pressure while in custody. As a preventative measure, doctors have instructed Mr. Gukasian to avoid stressful environments—a near impossibility when he is confined in immigration detention. Federal Respondents cannot (and have not) demonstrated reasonable alternative locations or methods of confinement for Mr. Gukasian that would assure this Court that his health could improve while in their custody. Additionally, ordering the Immigration Judge to conduct an additional bail hearing—in which Mr. Gukasian would bear the burden of proof and his conditions of confinement would likely be irrelevant in the bail analysis—would not serve as an adequate or sufficiently expedient remedy to help him. Because immediate release is the only way to ensure Mr. Gukasian's health and safety going forward, the Court should grant the Motion and grant Mr. Gukasian release on appropriate terms and

conditions. *See Pinchi,* No. 25-CV-05632-RMI (RFL), 2025 WL 1853763, at *1 (N.D. Cal. July 4, 2025) (granting immediate release in response to detainee's due process violation, partially because "Petitioner-Plaintiff ha[d] serious medical conditions that require[d] ongoing monitoring and care").

III. The Remaining *East Bay* Factors Weigh Heavily in Favor of Granting a Temporary Restraining Order.

A. Mr. Gukasian is Likely to Suffer Irreparable Harm Absent a Temporary Restraining Order.

41. Federal Respondents argue that Mr. Gukasian cannot establish a likelihood of irreparable harm under the *East Bay* factors for two reasons: (1) his claims surrounding insufficient access to counsel and purported inability to prepare his defense "are inherent in virtually all immigration detention," and (2) he possesses an adequate administrative remedy that would address his health and conditions of confinement. (Federal Respondents' Response at 13.)

42. Initially, it is worth noting that Federal Respondents do not address perhaps the clearest and most significant irreparable harm Mr. Gukasian will suffer if he is forced to remain in custody: death. Nor do Federal Respondents directly address the long line of cases that firmly establish that an ongoing constitutional deprivation constitutes irreparable harm. *Vasquez Perdomo v. Noem*, 148 F.4th 656, 689 (9th Cir. 2025) ("'When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.'") (quoting *Warsoldier v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005)). Conversely, Federal Respondents do not articulate any irreparable harm the government will suffer if the Motion is granted. *See Ercelik v. Hyde*, No. 1:25-CV-11007-AK, 2025 WL 1361543, at *14 (D. Mass. May 8, 2025) ("Conversely, Respondents will not suffer irreparable harm if injunctive relief is granted. Respondents remain free to pursue formal removal proceedings.").

43. Instead, Federal Respondents home in solely on Mr. Gukasian's allegations regarding his lack of access to counsel, alarmingly contending that HDC's practices surrounding legal visitation are "inherent in virtually all immigration detention." (Federal Respondents' Response at 13.) Federal Respondents point to no evidence that the visitation practices in HDC—which have included denying Mr. Gukasian access to interpreters, involuntarily confining counsel to the visitation room, failing to

provide meaningful and confidential methods of confidential legal communication, and retaliating against counsel because of complaints raised by Mr. Gukasian—are inherent in all immigration detention. Perhaps it is true that such conditions, in the current state of domestic affairs, are ubiquitous in immigration facilities. That does not make those conditions constitutional, and it certainly does not make them harmless.

44. Even as compared to other forms of constitutional deprivations, "[t]he harms likely to arise from the denial of access to legal representation in the context of asylum applications are particularly concrete and irreparable" because they can result in detainees being unjustifiably removed from the country without due process. *Innovation L. Lab v. Nielsen*, 310 F. Supp. 3d 1150, 1163 (D. Or. 2018). And as to the other harms arising from Mr. Gukasian's prolonged detention in substandard conditions—a harm also unaddressed by Federal Respondents—the law is clear that irreparable harm is coextensive with a showing of unconstitutional confinement. *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017) ("[I]t follows inexorably from our conclusion that the government's current policies are likely unconstitutional—and thus that members of the plaintiff class will likely be deprived of their physical liberty unconstitutionally in the absence of the injunction—that Plaintiffs have also carried their burden as to irreparable harm.").

45. Federal Respondents also assert that Mr. Gukasian cannot establish irreparable harm because he "possesses an adequate administrative remedy that directly addresses his claimed change of circumstances." (Federal Respondents' Response at 13 (citing *Sampson v. Murray*, 415 U.S. 61, 90 (1974)).) But as discussed *supra*, Mr. Gukasian's only remaining avenue to seek relief despite his prolonged incarceration and declining health is to seek bail redetermination under 8 C.F.R. § 1003.19(e). And § 1003.19(e) is unlikely to offer Mr. Gukasian any relief because the Immigration Judge in his case has held that criminal allegations in Armenia against Mr. Gukasian are sufficient to detain him—a calculus unlikely to be affected by his health, the length and character of his confinement, or his lack of access to counsel.

46. Moreover, *Sampson* does not impose some sort of administrative exhaustion requirement on Mr. Gukasian as Federal Respondents suggest. Instead, *Sampson* merely stands for the proposition that "[m]ere injuries, however substantial, in terms of money, time and energy necessarily expended…

are not enough" to warrant injunctive relief. *L.A. Mem'l Coliseum Comm'n v. Nat'l Football League*, 634 F.2d 1197, 1202 (9th Cir.1980) (citing *Sampson*, 415 U.S. at 90); *Hadel v. Willis Roof Consulting, Inc.*, No. 2:06-CV-01032-RLHRJJ, 2008 WL 4372783, at *2 (D. Nev. Sept. 23, 2008) (citing *Sampson* and its progeny for the proposition that "monetary injury is not normally considered irreparable for purposes of injunctive relief"). As discussed above, it is well-established in this circuit since *Sampson* that a constitutional deprivation constitutes irreparable harm.

47. Because Mr. Gukasian faces severe consequences to his health, well-being, and constitutional rights without any intervention by this Court, and because Federal Respondents have not cited any countervailing harm to their own interests, Mr. Gukasian has established a likelihood of irreparable harm. *See Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1263 (W.D. Wash. 2025) ("[T]he hardships faced by [the petitioner]… weigh strongly in his favor. Detention has separated [the petitioner] from his family, harmed his physical and mental health, and made it harder to access legal representation to defend against removal.").

B. The Public Interest and Balance of the Equities Weigh Heavily in Mr. Gukasian's Favor.

48. Lastly, Federal Respondents contend that Mr. Gukasian cannot establish that his proposed injunction is in the public interests or that the balance of the equities tip in his favor. To support their argument, Federal Respondents invoke the public interest in administering the "orderly and efficient administration of this country's immigration laws." (Federal Respondents' Response at 14 (quoting *Sasso v. Milhollan*, 735 F. Supp. 1045, 1049 (S.D. Fla. 1990)).)

49. Federal Respondents ignore, however, that the government is more than fully capable of enforcing its immigration laws while Mr. Gukasian is out of custody. Immigration detention is not a necessary predicate to carrying out the removal process—especially when no evidence suggests that Mr. Gukasian poses a flight risk if released. And in general, Federal Respondents have not articulated why enforcing immigration laws and upholding the constitution are mutually exclusive. *See Vasquez Perdomo v. Noem*, No. 2:25-CV-05605-MEMF-SP, 2025 WL 1915964, at *16 (C.D. Cal. July 11, 2025) ("[A]lthough it is true that the government has an interest in enforcing immigration laws, Defendants make no showing that immigration enforcement cannot be conducted without undermining the rights

afforded to immigrants under the Fifth Amendment. As the Ninth Circuit said in a case concerning alleged Fourth Amendment violations by another law enforcement agency, requiring law enforcement to comply with the Constitution does not prevent law enforcement from enforcing the law.") (citing *Easyriders Freedom F.I.G.H.T. v. Hannigan*, 92 F.3d 1486, 1502 (9th Cir. 1996)) (internal quotations omitted).

50. Perhaps equally as important, the public has a far weightier interest in upholding constitutional rights and granting Mr. Gukasian's injunction than it does in enforcing immigration detention against an infirm and bedridden individual. "[P]ublic interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution." *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005). Thus, the Ninth Circuit has held that "neither equity nor the public's interest are furthered by allowing violations of federal law to continue." *Galvez v. Jaddou*, 52 F.4th 821, 832 (9th Cir. 2022). This is particularly true in the context of unlawful detention, where "[t]he public has a strong interest in upholding procedural protections… and the Ninth Circuit has recognized that the costs to the public of immigration detention are staggering." *Martinez Hernandez v. Andrews*, No. 1:25-CV-01035 JLT HBK, 2025 WL 2495767, at *12 (E.D. Cal. Aug. 28, 2025) (citing *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *3 (N.D. Cal. Mar. 1, 2021)) (internal quotations omitted). !Because both the public interest and balance of the equities weigh in Mr. Gukasian's favor, the Court should grant his Motion.

CONCLUSION

51. It is sometimes easy to forget that behind the precedent and law supporting every case, real people with real problems exist. The legal constructs crafted to address those problems can be helpful ways to resolve disputes, but sometimes obfuscate reality.

52. As of the time of the writing of this pleading, the reality before this Honorable Court is plain: Mr. Gukasian is dying alone in a jail cell because he allegedly committed the mistake of overstaying his tourist visa. Federal Respondents believe that the law of this country requires this Court to turn a blind eye to his pleas for help. Federal Respondents are wrong. They are wrong legally. They are wrong factually. And they are wrong morally.

53. For the foregoing reasons, Mr. Gukasian's motion for a temporary restraining order should be granted and he should immediately be released on bail pending these proceedings.

Dated: October 3, 2025

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