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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; and CAPTAIN FRANK D'AMICO, Captain of Corrections, Henderson Detention Center,

Respondents-Defendants.

Case No. 2:25-cv-01697

**REPLY IN SUPPORT OF PETITION FOR HABEAS CORPUS**

## INTRODUCTION

1. In response to Mr. Gukasian's remaining claim in the Petition-Complaint at Docket Number 1, Respondents-Defendants make two primary arguments: (1) that the Court must dismiss Mr. Gukasian's prolonged detention claim for lack of jurisdiction because a series of four jurisdiction-stripping statutes[1] prohibit the Court from deciding his claim; and (2) even if the Court has jurisdiction to hear Mr. Gukasian's prolonged detention claim, the claim is foreclosed on the merits by *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022). The Court should reject both arguments.

2. As to the first argument, a series of Ninth Circuit cases make clear that this Court has jurisdiction to hear Mr. Gukasian's prolonged detention claim (and indeed all of his claims). In *Walters v. Reno*, 145 F.3d 1032, the Ninth Circuit interpreted § 1252(g)—one of the statutes cited by Respondents-Defendants—and held that it does not prohibit "general collateral challenges to unconstitutional practices and policies used by [an] agency." 145 F.3d at 1052. More recently, the Ninth Circuit cited *Walters* approvingly for the proposition that § 1252(g) "'does not prevent [a] district court from exercising jurisdiction over… due process claims" and "does not prohibit challenges to unlawful practices merely because they are in some fashion connected" to the Attorney General's discretion to remove a noncitizen or commence immigration proceedings against him. *Ibarra-Perez v. United States*, No. 24-631, 2025 WL 2461663, at *7 (9th Cir. Aug. 27, 2025) (citing *Walters*, 145 F.3d at 1052) (internal quotations omitted).

3. Likewise, the Ninth Circuit has made clear that the other three statutes upon which Respondents-Defendants rely apply *only* to claims seeking direct review of an order of removal or bail order issued by an immigration judge. *See Singh v. Gonzales*, 499 F.3d 969, 978 (9th Cir. 2007) ("By virtue of their explicit language, both §§ 1252(a)(5) and 1252(b)(9) apply only to those claims seeking judicial review of orders of removal."); *Hernandez v. Sessions*, 872 F.3d 976, 987 (9th Cir. 2017) (affirming that § 1226(e) "does not, however, preclude habeas jurisdiction over constitutional claims") (internal quotations and citation omitted). None of the statutes apply to the prolonged detention and unconstitutional conditions of confinement claims at issue here. Put simply, the jurisdiction-stripping

[1] 8 U.S.C. § 1252(g); 8 U.S.C. § 1252(b)(9); 8 U.S.C. § 1252(a)(5); 8 U.S.C. § 1226(e).

statutes Respondents-Defendants purport to invoke do not apply in a case like this one, where an immigration detainee challenges the lawfulness and constitutionality of his confinement.

4. As for the second argument, Mr. Gukasian acknowledges that this Court has ruled that he is not likely to prevail on his request for immediate release due to his unconstitutionally prolonged detention claim.[2] However, Mr. Gukasian reserved the right to request alternative measures of relief in his prayer for relief. (Dkt. No. 1 at ¶ 146 (pleading generally that the Court "[g]rant any other and further relief that [it] may deem just and proper").) Therefore, while the Court's prior ruling found that the *Mathews* analysis in *Rodriguez Diaz* foreclosed Mr. Gukasian's request for immediate release, the weight and balance of the *Mathews* factors changes when the requested relief is distinct.

5. Mr. Gukasian now requests such alternative relief, and asks this Court to order a bond hearing to take place before an immigration judge that (a) requires the immigration judge to weigh his deteriorating health and length of confinement as relevant bail factors, (b) places the burden of proof on the government by clear and convincing evidence, and (c) requires the immigration judge to explicitly consider the availability of alternative conditions of release. Such a remedy requires virtually nothing additional of the government in the way of cost or administrative burden. Critically, it also poses a limited (if any) threat to the government's interest in removing undocumented aliens from the country because "the government has no legitimate interest in detaining individuals who have been determined not to be a danger to the community and whose appearance at future immigration proceedings can be reasonably ensured by… alternative conditions." *Perera v. Jennings*, No. 21-CV-04136-BLF, 2021 WL 2400981, at *5 (N.D. Cal. June 11, 2021) (citing *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017)) (internal quotations omitted). Mr. Gukasian's more limited request for relief tips the *Mathews* factors in his favor, and should result in this Court granting Claim III in the Petition-Complaint.

6. For the reasons discussed below, this Court should deny Defendants-Respondents' motion to dismiss under Rule 12(b)(1), grant Claim III in the Petition-Complaint, and either (1) order that Mr. Gukasian be released from custody, or (2) order a new bond hearing in which the government

[2] To preserve the record for an appeal (if any), Mr. Gukasian continues to request his immediate release as a remedy for prolonged detention.

bears the burden of proof by clear and convincing evidence and where Mr. Gukasian's immigration judge is required to weigh his deteriorating health, length of confinement, and the availability of alternative conditions of release as relevant bail considerations.

**PROCEDURAL HISTORY**

7. On September 9, 2025, Mr. Gukasian filed the pleading initiating this matter. (Dkt. No. 1 [hereinafter the "Petition-Complaint"].) The Petition-Complaint was captioned a "Petition for Writ of Habeas Corpus and Complaint for Injunctive and Declaratory Relief," and set out four claims for relief, all arising under the federal constitution: Claim I alleging a violation of Mr. Gukasian's due process rights; Claim II alleging a violation of Mr. Gukasian's right to be free from punitive conditions of confinement; Claim III alleging a violation of Mr. Gukasian's right to be free from prolonged detention; and Claim IV alleging a violation of Mr. Gukasian's First Amendment right to communicate with his attorneys. On September 19, 2025, Mr. Gukasian filed a Motion for a Temporary Restraining Order seeking his immediate release pending adjudication of this matter. ("TRO," Dkt. No. 5.)

8. On September 23, 2025, the Court *sua sponte* dismissed Claims I, II, and IV of the Petition-Complaint, holding that it lacked jurisdiction to hear the claims as pleaded. (*See* Dkt. No. 7 at 4.) On September 29, 2025, Federal Respondents-Defendants filed a response to the TRO. (Dkt. No. 11.) On October 3, 2025, Mr. Gukasian filed a reply to the response by Respondents-Defendants. (Dkt. No. 19.) On October 14, 2025, the Court held a hearing on Mr. Gukasian's TRO. At the hearing, the Court issued a ruling from the bench denying Mr. Gukasian his requested relief of release pending these proceedings.

9. On October 20, 2025, Federal Respondents-Defendants filed a response to the sole remaining claim in Mr. Gukasian's Petition-Complaint. ("Response to Petition-Complaint," Dkt. No. 33.) Several days later, Mr. Gukasian filed a motion requesting the Court reconsider its order dismissing his civil-rights claims. (Dkt. No. 35.)

**LEGAL STANDARD**

10. Federal courts are courts of limited jurisdiction, and must only adjudicate cases that they have jurisdiction to decide. *See Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978). A federal court is presumed to lack jurisdiction in a particular case unless a basis for jurisdiction is

affirmatively shown. *See Stock West, Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1225 (9th Cir. 1989).

11. Fed. R. Civ. P. 12(b)(1) allows a party to seek dismissal of a claim or action for a lack of subject matter jurisdiction. *See* Fed. R. Civ. P. 12(b)(1). In a motion to dismiss brought under Rule 12(b)(1), the party invoking the Court's jurisdiction bears the burden of proving that the case is properly in federal court. *See McCauley v. Ford Motor Co.*, 264 F.3d 952, 957 (9th Cir. 2001) (citing *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936)). The preponderance of the evidence standard applies to motions to dismiss brought under Rule 12(b)(1). *See Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014); *see also Charleston v. Nevada*, 423 F. Supp. 3d 1020, 1025 (D. Nev. 2019) (explaining the same and citing *Leite*). "Because subject matter jurisdiction goes to the power of the court to hear a case, it is a threshold issue and may be raised at any time and by any party." *Mallard Auto. Grp., Ltd. v. United States*, 343 F. Supp. 2d 949, 952 (D. Nev. 2004) (citing Fed. R. Civ. P. 12(b)(1)).

## ARGUMENT

12. Respondents-Defendants make two distinct arguments as to why this Court should deny Mr. Gukasian habeas relief. First, Respondents-Defendants aver that Mr. Gukasian's claim should be dismissed because four separate statutes deprive this Court of subject matter jurisdiction to hear his claim. (Response to Petition-Complaint at 7-10.) Second, Respondents-Defendants contend that even if this Court reaches the merits, Mr. Gukasian's claim is foreclosed by *Rodriguez Diaz v. Garland*. (*Id.* at 10-13.) Mr. Gukasian addresses both arguments in turn.

### I. 8 U.S.C. § 1252(g), 8 U.S.C. § 1252(b)(9), 8 U.S.C. § 1252(a)(5), and 8 U.S.C. § 1226(e) Do Not Bar Mr. Gukasian's Claims

#### *A. 8 U.S.C. § 1252(g) Does Not Apply to Collateral Challenges to the Constitutionality of a Detainee's Confinement.*

13. Respondents-Defendants first contend that Mr. Gukasian is prohibited from bringing his claim for prolonged detention because 8 U.S.C. § 1252(g) bars this Court from hearing his claim. Specifically, they argue that Mr. Gukasian's claim is barred by § 1252(g) because that statute deprives courts of jurisdiction to hear "any cause or claim by or on behalf of an alien arising from the decision or

action by the Attorney General to [] commence proceedings[]… against any alien[.]" 8 U.S.C. § 1252(g). Respondents-Defendants reason that because Mr. Gukasian is challenging his prolonged detention, and his detention inherently "arises from the Attorney General's decision to commence proceedings," review of his claims is barred by § 1252(g).

14. But Respondents-Defendants' expansive reading of § 1252(g) is foreclosed by Ninth Circuit precedent. In *Walters v. Reno*, 145 F.3d 1032 (9th Cir. 1998), the Ninth Circuit addressed an appeal from a district court order granting injunctive relief to a class of immigration detainees alleging that they were deprived of due process due to inadequate notice of deportation procedures. *Walters*, 145 F.3d at 1032. On appeal in *Walters*, the government argued that § 1252(g) deprived the district court of jurisdiction to "order any relief that interfere[d] with [the government's] attempt to execute deportation orders against the class members." *Id.* at 1052.

15. The *Walters* panel flatly rejected the government's contention. Writing for the court, Judge Reinhardt explained that

> "the government does not assert that the district court was without jurisdiction to hear the claims brought by the plaintiffs, nor could it. By its terms, the statutory provision relied upon by the government does not prevent the district court from exercising jurisdiction over the plaintiffs' due process claims. Those claims do not arise from a 'decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien,' but instead constitute 'general collateral challenges to unconstitutional practices and policies used by the agency.'"

*Id.* (quoting *McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 492 (1991)).

16. *Walters* went on to observe that the due process claims brought by the plaintiffs were not impermissibly used as a vehicle to "conceal the true nature of their claims … to obtain judicial review of the merits of their INS proceedings." *Id.* Instead, *Walters* noted that the plaintiffs were merely attempting to "enforce their constitutional rights to due process in the context of those [immigration] proceedings." *Id.* The Plaintiffs had not even "raised a constitutional challenge to any of the substantive factors used by the government in determining whether to [commence removal], nor [did] they ma[k]e any allegations as to the merits of the decision to execute removal orders against them, except to the extent necessary to substantiate their due process claims." *Id.*

17. Finally, *Walters* explicitly cautioned that lower courts inclined to broadly interpret § 1252(g) in civil-rights cases should be "mindful that 'where possible, jurisdiction-limiting statutes should [instead] be interpreted to preserve the authority of the courts to consider constitutional claims.'" *Id.* (quoting *American–Arab Anti–Discrimination Comm. v. Reno*, 119 F.3d 1367, 1372 (9th Cir. 1997)). The panel emphasized that this was especially true in cases where "legislation [could be interpreted to] immunize[] an agency's practices and procedures from due process challenges," an outcome that "'would raise difficult constitutional issues.'" *Id.* (quoting *Cath. Soc. Servs., Inc. v. Reno*, 134 F.3d 921, 927 (9th Cir. 1997)). "[I]n light of these concerns," *Walters* held that "the statute does not impose a jurisdictional bar to the plaintiffs' claims or the relief the district court awarded." *Id.*

18. Just two months ago, the Ninth Circuit had occasion to revisit the scope of § 1252(g) in *Ibarra-Perez v. United States*, No. 24-631, 2025 WL 2461663, at *1 (9th Cir. Aug. 27, 2025). In *Ibarra-Perez*, a non-citizen attempted to bring claims for damages against the government under the Federal Tort Claims Act (FTCA)—including claims for violations of his due process rights—for improperly removing him to Mexico after Cuba was designated as his country of removal. *Id.* The government argued that the district court lacked jurisdiction to hear the plaintiff's claims, contending that his objection to the propriety of his removal made his lawsuit one that challenged the execution of his removal order within the meaning of § 1252(g). *Id.* at 7.

19. The Ninth Circuit disagreed. Noting that "[t]he Supreme Court has given a 'narrow reading' to § 1252(g)," the *Ibarra-Perez* panel emphasized that 1252(g) applies only to "three discrete actions that the Attorney General may take: her decision or action to *commence* proceedings, *adjudicate* cases, or *execute* removal orders." *Id.* at 6 (quoting *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 487 (1999)) (emphasis in original) (internal quotations and citation omitted). The panel went on to explain that "[i]nstead of sweep[ing] in any claim that can technically be said to 'arise from' the three listed actions, the provision refer[s] to just those three specific actions themselves." *Id.* (citing *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) (plurality opinion)) (internal quotations omitted). This narrow reading of § 1252(g), the panel explained, was consistent with the Ninth Circuit's repeated holdings that § 1252(g) "does not prohibit challenges to unlawful practices merely because they are in some fashion connected to removal orders." *Id.* at *7.

20. The panel noted that Ibarra-Perez "d[id] not challenge ICE's discretionary authority to decide 'when' or 'whether' to execute a removal order…. He d[id] not claim, for example, that ICE should have delayed his removal or exercised its discretion not to remove him. Instead, he challenge[d] ICE's separate decision about *where* [it] sen[t] him." *Id.* (emphasis in original) (citation omitted). "The government's broad reading of § 1252(g)," the *Ibarra-Perez* panel admonished, "would lead to a result that is not contemplated in the statute and that has been disavowed by the Supreme Court. [It] would entirely insulate from judicial review any post-hearing decision by ICE to remove noncitizens to third countries where they would be in danger of persecution, torture, and even death." *Id. Ibarra-Perez* went on to cite *Walters* approvingly, echoing its core principle that § 1252(g) "does not prevent [a] district court from exercising jurisdiction over… due process claims… [or claims that] constitute 'general collateral challenges to unconstitutional practices and policies used by [an] agency.'" *Id.* at *7 (quoting *Walters*, 145 F.3d at 1052). Because Ibarra-Perez raised "purely legal arguments" addressing the manner in which he was removed—as opposed to "contend[ing] that ICE was categorically forbidden to remove him to Mexico"—the panel held that it had jurisdiction to hear his claims. *Id.* at 7.

21. In addition to the Ninth Circuit, district courts have repeatedly rejected arguments mirroring those raised by Respondents-Defendants here. *See, e.g.*, *Yang v. Kaiser*, No. 2:25-CV-02205-DAD-AC (HC), 2025 WL 2791778, at *3 (E.D. Cal. Aug. 20, 2025) (§ 1252(g) did not bar court from entertaining habeas petition because alien was merely challenging the lawfulness of his detention pursuant to final order of removal, not removal itself); *Ortega v. Kaiser*, No. 25-CV-05259-JST, 2025 WL 2243616, at *3 (N.D. Cal. Aug. 6, 2025) (same); *Chhoeun v. Marin*, 306 F. Supp. 3d 1147, 1159 (C.D. Cal. 2018) (§ 1252(g) did not bar habeas petitioners bringing due process claims from seeking a temporary stay of order of removal while they pursued reopening of their immigration case); *Jimenez v. Napolitano*, No. C-12-03558 RMW, 2012 WL 3144026, at *1 (N.D. Cal. Aug. 1, 2012) (§ 1252(g) did not bar stay of final order of removal while court entertained habeas petition alleging ineffective assistance of counsel and seeking reopening of immigration case).

22. For example, in *Ortega v. Kaiser*, the government argued that § 1252(g) barred judicial review of an alien's due process claims requesting that the government be enjoined from detaining him without notice and a hearing pursuant to execution of his final removal order. No. 25-CV-05259-JST,

2025 WL 2243616, at *3. The district court rejected that argument, pointing out that "Ortega's claims arise from his concerns about the execution of his removal order… [which] is not the same as challenging the decision or action... to... execute [a] removal order[ ]." *Id.* (internal quotations and citation omitted). Because Ortega challenged only his "potential detention [under his current removal order] or removal to a country… for which there currently exists no final removal order," the district court held that § 1252(g) did not divest it of jurisdiction to hear his claims. *Id.*

23. Here, Mr. Gukasian's case bears significant similarity to *Walter*, *Ibarra-Perez*, and *Ortega*. Just like the petitioners in those cases, Mr. Gukasian does not seek to challenge ICE's discretionary authority about "when or whether" to commence immigration proceedings against him. *Ibarra-Perez*, No. 24-631, 2025 WL 2461663, at *7 (internal quotations omitted). Indeed, Mr. Gukasian has *never* sought relief from this Court that prevents ICE from adjudicating his immigration case or commencing immigration proceedings against him. Instead, Mr. Gukasian has challenged the conditions and duration of his confinement. Likewise, as a remedy, he has sought release or amelioration of his conditions of confinement—not that this Court forbid ICE from pursuing removal proceedings. At best, his constitutional challenges to his detention constitute "general collateral challenges to unconstitutional practices and policies used by" Respondents-Defendants. *Walters*, 145 F.3d at 1052 (internal quotations and citation omitted). But § 1252(g) bars courts from categorically preventing ICE from commencing immigration proceedings against an individual, and does not prohibit immigration detainees from "enforce[ing] their constitutional rights to due process in the context of those [immigration] proceedings." *Id.*

24. Because Mr. Gukasian challenges the constitutionality of his detention by Respondents-Defendants—not their authority to commence immigration proceedings against him—§ 1252(g) does not strip this Court of jurisdiction to hear his prolonged detention claim. Consistent with Ninth Circuit precedent, the Court should interpret § 1252(g) narrowly and reject its application to this case.

***B. 8 U.S.C. §§ 1252(b)(9), 1252(a)(5), and 1226(e) Do Not Apply to This Case Because Mr. Gukasian Is Not Asking the Court to Review an Order of Removal.***

25. Next, Respondents-Defendants argue that Mr. Gukasian's claim for prolonged confinement is jurisdictionally barred by 8 U.S.C. §§ 1252(b)(9), 1252(a)(5), and 1226(e).

26. But that argument fares no better than Respondents-Defendants' first argument: §§ 1252(b)(9), 1252(a)(5), and 1226(e) do not apply because all three statutory jurisdictional bars apply only to claims seeking judicial review of an order of removal or order of detention.

27. Specifically, §§ 1252(b)(9) and 1252(a)(5)—which are read in tandem with each other—prohibit judicial review of "all questions of law . . . including interpretation and application of statutory provisions . . . arising from any action taken . . . to remove an alien from the United States" unless that judicial review is in the form of a "petition for review filed with [the] appropriate court of appeals[.]" 8 U.S.C. § 1252(b)(9); 8 U.S.C. § 1252(a)(5).

28. Germain to Mr. Gukasian's case, "[b]y virtue of their explicit language, both §§ 1252(a)(5) and 1252(b)(9) apply only to those claims seeking judicial review of orders of removal." *Singh v. Gonzales*, 499 F.3d 969, 978 (9th Cir. 2007). However, as discussed above, Mr. Gukasian does not challenge any aspect of his order of removal. Indeed, Mr. Gukasian's Petition-Complaint in this matter was filed almost a month before an order of removal was entered on October 2, 2025.

29. Instead of challenging any aspect of his removal, Mr. Gukasian is challenging the constitutionality of his detention—specifically, whether his detention pending adjudication of his immigration case has been unlawfully prolonged without adequate due process. Put simply, §§ 1252(b)(9) and 1252(a)(5) do not apply because adjudication of Mr. Gukasian's claim does not require this Court to review his removal order. *See Aden v. Nielsen*, 409 F. Supp. 3d 998, 1006 (W.D. Wash. 2019) (holding that §§ 1252(b)(9) and 1252(a)(5) did not bar habeas claims because "petitioner's claims are independent of his removal order. Petitioner does not challenge the IJ's determination that he is removable or claim any deficiency in the removal order itself.... To resolve petitioner's arguments, the Court does not need to review the removal order"); *Nguyen v. Fasano*, 84 F. Supp. 2d 1099, 1105 (S.D. Cal. 2000) (finding that "the § 1252(b)(9) 'zipper clause' does not deprive th[e] court of jurisdiction over Petitioners' claims regarding their detention" because "§ 1252(b)(9) applies only to final orders of removal and is not intended to cover all challenges by an alien to all aspects of the treatment he or she receives during the deportation process... The language of § 1252(b)(9) [] appears to apply to removal proceedings, and this court holds that it does not apply to detention").

30. Likewise, by its explicit terms, § 1226(e) applies only to bar federal district courts from reviewing or setting aside certain aspects of bail orders by an immigration judge. 8 U.S.C. § 1252(e) ("No court may set aside any action or decision by the Attorney General under this section regarding the detention of any alien or the revocation or denial of bond or parole."). Thus, the Ninth Circuit has held that "§ 1226(e)… does not limit habeas jurisdiction over constitutional claims[.]" *Singh v. Holder*, 638 F.3d 1196, 1202 (9th Cir. 2011); *see also Hernandez v. Sessions*, 872 F.3d 976, 987 (9th Cir. 2017) (affirming *Singh*'s holding that § 1226(e) "does not, however, preclude habeas jurisdiction over constitutional claims") (internal quotations and citation omitted). Consistent with *Singh* and *Hernandez*, lower courts in this Circuit have rejected the application of § 1226(e) to limit their authority to hear constitutional challenges pertaining to an immigration detainee's length or conditions of confinement.[3] *See, e.g.*, *Milan-Rodriguez v. Sessions*, No. 116CV01578AWISABHC, 2018 WL 400317, at *2 (E.D. Cal. Jan. 12, 2018) (finding court had jurisdiction over prolonged detention claim notwithstanding § 1226(e)); *Sales v. Johnson*, 323 F. Supp. 3d 1131, 1139 (N.D. Cal. 2017) (same); *Nguyen*, 84 F. Supp. 2d at 1106 (finding § 1226(e) irrelevant where "Petitioners d[id] not challenge a bond determination" and instead only "challenge[d] the constitutionality of their detention").

31. In sum, both the plain language of the jurisdictional provisions cited by Respondents-Defendants and the Ninth Circuit cases interpreting those provisions foreclose any argument that this Court lacks jurisdiction to hear Mr. Gukasian's claim for prolonged detention. Because Respondents-Defendants' arguments are contravened by both an objective reading of the relevant statutes and binding precedent in this Circuit, the Court should find it retains jurisdiction to decide Mr. Gukasian's claim on the merits.

## II. Mr. Gukasian's Prolonged Detention Violates Due Process

32. In addition to their jurisdictional arguments, Respondents-Defendants contend that Mr. Gukasian's prolonged detention claim fails on the merits. Respondents-Defendants' arguments on

[3] Indeed, Respondents-Defendants appear to concede that "§ 1226(e) does not preclude review of bona fide constitutional or legal questions." (Response to Petition-Complaint at 10.) While Respondents-Defendants go on to assert that Mr. Gukasian does not bring a bona fide constitutional claim because his prolonged detention claim is foreclosed by *Diaz v. Garland*, that argument goes to the merits of Mr. Gukasian's claim—not the Court's jurisdiction to adjudicate it in the first instance.

the merits largely mirror those made in their response to Mr. Gukasian's TRO. Specifically, Respondents-Defendants argue that *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022) forecloses any possible relief for Mr. Gukasian. (Response to Petition-Complaint at 10-12.)

33. Mr. Gukasian acknowledges that this Court already ruled that *Rodriguez Diaz* forecloses Mr. Gukasian's prolonged detention claim as it relates to his requested relief of immediate release. Mr. Gukasian continues to maintain that *Rodriguez Diaz* is distinguishable from the instant case, and that the appropriate remedy for his unconstitutionally prolonged detention is immediate release, given his substantial health problems.[4]

34. However, setting aside the Court's prior ruling, Mr. Gukasian's TRO explicitly requested an order providing for his immediate release from custody. (TRO at 3, 30.) Mr. Gukasian's Petition-Complaint, on the other hand, was not limited to a request for release from custody. Instead, the Petition-Complaint specifically pleaded a request for alternative relief from the Court. (Petition Complaint ¶ 146 (pleading generally that the Court "[g]rant any other and further relief that [it] may deem just and proper").)

35. Pursuant to his request in the Petition-Complaint, Mr. Gukasian now requests a form of alternative relief from the Court, one that he respectfully contends alters the balance of the *Mathews* factors: a bond hearing before his immigration judge that (a) requires the immigration judge to weigh his deteriorating health and length of confinement as relevant bail factors; (b) places the burden of proof on the government by clear and convincing evidence; and (c) requires the immigration judge to explicitly consider the availability of alternative conditions of release.

36. Unlike ordering his immediate release, ordering a modified bail hearing with the burden placed on the government is not an extraordinary remedy. The Ninth Circuit has found that immigration detainees are constitutionally entitled to a bail hearing where the government bears the burden of proof by clear and convincing evidence when an immigration detainee is unconstitutionally held in prolonged

[4] While Mr. Gukasian continues to maintain that *Rodriguez Diaz* is distinguishable from the instant case, to avoid relitigating the same issues already decided by this Court, Mr. Gukasian simply incorporates by reference the arguments made and evidence submitted in support of his TRO into this Reply. (*See* Dkt. Nos. 5–5-9.)

detention. *Singh v. Holder*, 638 F.3d 1196, 1202 (9th Cir. 2011) ("We also hold that, given the substantial liberty interests at stake in [bail] hearings [mandated by prolonged detention], the government must prove by clear and convincing evidence that continued detention is justified."). While *Singh* was ultimately overruled on unrelated statutory grounds, the Ninth Circuit has recently reaffirmed that the government—not the petitioner—should bear the burden of proof in any immigration bail hearing mandated by the due process clause. *See Martinez v. Clark*, 124 F.4th 775, 785 (9th Cir. 2024) ("At the outset of its decision, the BIA properly noted that the government bore the burden to establish by clear and convincing evidence that Martinez is a danger to the community."); *see also Calderon v. Bostock*, No. 2:24-CV-01619-MJP-GJL, 2025 WL 879718, at *3 (W.D. Wash. Mar. 21, 2025) ("[I]n the recently-decided *Martinez v. Clark*… the Ninth Circuit affirmed that in an immigration bond hearing [required by the due process clause,] it is the government, not the petitioner, who bears the burden of proof under the clear and convincing evidence standard.").

37. Likewise, district courts have well-established authority to instruct an immigration judge to explicitly consider specific bail factors—including the availability of alternative conditions of release. On at least one occasion, the Ninth Circuit has affirmed a district court's order requiring an immigration judge to weigh and consider bail factors not otherwise legally required. *See Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017) (affirming district court's order requiring explicit consideration by immigration judge of financial circumstances and availability of alternative conditions of release as bail factor). Similarly, it is not unusual for district courts ordering a bail hearing pursuant to a detainee's due process rights to also order immigration judges to consider certain bail factors to ensure a fair hearing. *See Maksim v. Annex*, No. 1:25-CV-00955-SKO (HC), 2025 WL 2879328, at *6 (E.D. Cal. Oct. 9, 2025) (instructing immigration judge to consider detainee's financial circumstances or alternatives to detention when setting bail); *see also L.G. v. Choate*, 744 F. Supp. 3d 1172, 1187 (D. Colo. 2024) (ordering a new bail hearing placing the burden of proof on the government and requiring an impartial adjudicator to consider community-based alternatives to detention, to disregard unauthenticated evidence of criminal contacts, and to consider the petitioner's mental health diagnoses). The guarantee of a new bond hearing with additional procedural safeguards would ensure that the prolonged nature of

Mr. Gukasian's confinement (and its deleterious impact on his health) is adequately factored into the immigration judge's bail analysis.

38. Most importantly, Mr. Gukasian is entitled to his requested relief because the remedy sought tips the balance of the *Mathews* factors in his favor. Specifically, Mr. Gukasian's requested relief alters the balance of "the probable value, if any, of additional or substitute procedural safeguards" and "the Government's interest, including the… fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

39. *First*, the probable value of the additional safeguards proposed is significant. A modified bail hearing with the burden of proof placed on the government ensures that if Mr. Gukasian continues to be detained, his prolonged detention at least accounts for the dire nature of his current circumstances. Moreover, there is significant doubt as to whether any bail redetermination hearing under 8 C.F.R. § 1003.19(e) would even permit an immigration judge to consider Mr. Gukasian's declining health and length of detention. An order specifying that the immigration judge *must* weigh both factors better ensures that Mr. Gukasian's bail hearing is individualized, fair, and comports with due process.

40. *Second*, in the context of a modified bail hearing, the government interest highlighted in *Rodriguez-Diaz* is significantly reduced. *Rodriguez-Diaz* premised its holding on the notion that the government had a significant interest in "preventing aliens from 'remain[ing] in the United States in violation of our law.'" *Rodriguez-Diaz*, 53 F.4th at 1208 (quoting *Demore v. Kim*, 538 U.S. 510, 518 (2003)). But simply "[r]equiring the government to provide [a detainee] 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." *I.E.S. v. Becerra*, No. 23-CV-03783-BLF, 2023 WL 6317617, at *9 (N.D. Cal. Sept. 27, 2023) (internal quotations and citation omitted). This is because "the government has no legitimate interest in detaining individuals who have been determined not to be a danger to the community and whose appearance at future immigration proceedings can be reasonably ensured by… alternative conditions." *Perera v. Jennings*, No. 21-CV-04136-BLF, 2021 WL 2400981, at *5 (N.D. Cal. June 11, 2021) (citing *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017) (internal quotations omitted). Thus, "the government's interest is not seriously undermined [by Mr. Gukasian's

requested relief], as the relief [he] requests will still allow the government ample opportunity to demonstrate that [his] detention is justified." *Id.*

41. *Third*, and finally, Mr. Gukasian's requested relief of a bail hearing with a modified burden of proof has virtually no "fiscal [or] administrative burden[]" on the immigration system. After all, Respondents-Defendants have contended that the government is already required to provide Mr. Gukasian with an additional bail hearing. And they cannot seriously maintain that being required to justify Mr. Gukasian's detention by clear and convincing evidence undermines their legitimate interests or entails an undue administrative burden, particularly when "custody hearings in immigration [] are routine and impose a minimal cost[.]" *Pablo Sequen v. Albarran*, No. 25-CV-06487-PCP, 2025 WL 2935630, at *12 (N.D. Cal. Oct. 15, 2025).

42. Accordingly, the *Mathews* factors favor Mr. Gukasian when considered in the context of providing him with a modified bail hearing in which the government bears the burden of proof, and in which the immigration judge must explicitly consider his health, length of confinement, and the availability of alternative conditions of release. A modified bail hearing implicates a much less weighty government interest, places absolutely no fiscal or administrative burden on the immigration system, and provides Mr. Gukasian with a potentially meaningful form of procedural vindication for his prolonged detention. The Court should therefore find that Mr. Gukasian is entitled to a modified bail hearing under *Mathews* and order that his immigration judge conduct a new bail hearing with the aforementioned procedural safeguards in place.

## CONCLUSION

43. For the foregoing reasons, this Court should deny Defendants-Respondents' motion to dismiss under Rule 12(b)(1), grant Claim III in the Petition-Complaint, and either (1) order that Mr. Gukasian be released from custody, or (2) order a new bond hearing in which the government bears the burden of proof by clear and convincing evidence, where Mr. Gukasian's immigration judge is required to weigh his deteriorating health and length of confinement as relevant bail considerations, and where the immigration judge must explicitly consider the availability of alternative conditions of release.

Dated: November 4, 2025

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