Harold Herrera-Ramirez
Alien No. [redacted]
Nevada Southern Detention Center
2190 East Mesquite Avenue
Pahrump, Nevada 89060

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

HAROLD HERRERA-RAMIREZ,	)	Case No.
-Petitioner, *Pro Se*,	)	INS No. [redacted]
v.	)	**No. 2:25-cv-01749-MMD-EJY**
THE UNITED STATES OF AMERICA,	)	Custody Status: **DETAINED**
Michael BERNACKE, in his Official Capacity, Field Office Director, Salt Lake City Field Office, U.S. Immigration and Customs Enforcement,	)	
Patrick J. LECHLEITNER, in his Official Capacity, Acting Director, Immigration & Customs Enforcement,	)	
Kerri Ann QUIHUIS, in her Official Capacity, ICE Field Office Director, Detention and Removal, Las Vegas, Nevada (ICE Local)	)	**PETITIONER'S REPLY**
Kristi NOEM, in her Official Capacity, Secretary of the Department of Homeland Security	)	
Pamela J. BONDI, in her Official Capacity, Attorney General, Department of Justice,	)	
John MATTOS, in his Official Capacity, Warden of Immigration Detention Facility, Nevada Southern Detention Center;	)	
-Respondents.	)	

PETITIONER'S REPLY

Comes now Petitioner Mr. Harold Herrera-Ramirez, appearing *Pro Se*, hereby respectfully submits this instant Reply. Further, Petitioner hereby respectfully names John Mattos, Warden, Nevada Southern Detention Center, 2190 East Mesquite Avenue, Pahrump, Nevada 89060, in this action to be included as the Respondent.

I. INTRODUCTION

The Petitioner is entitled to relief before this Court because the Fifth Amendment Due Process and Eighth Amendment Excessive Bail Clause of the United States Constitution have been violated. Petitioner is the subject of prolonged detention, independently justifying a new Bond Hearing where the Immigration Court (herein referred to as "IC") orders the Respondents (also referred to as "Government") to bear the heavy burden of proof that Petitioner is a danger to the community or a flight risk by the very high standard of *clear and convincing evidence* which cannot be met in this case. The Government's recitation of the facts and procedural history agrees with Petitioner and with the additions, exception, and modifications contained herein.

II. ARGUMENT

A. Due Process Requires the Government to Bear the Heavy Burden of Proof at Bond Hearings to Justify Prolonged Detention.

The Fifth Amendment Due Process Clause mandates that no person shall be deprived of liberty without due process of law. *U.S. Const., amend. V.*; *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the [Due Process] Clause protects". *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Civil commitment for any purpose constitutes a significant deprivation of liberty. *Addington v. Texas*, 441 U.S. 418, 425 99 S. Ct. 1804, 60 L. Ed. 2d 323 (1979). In the immigration context, the Supreme

Court has recognized only two valid purposes for civil detention—to mitigate the risks of danger to the community and to prevent flight. *Demore*, 538 U.S. at 528. The Ninth Circuit has held that the Government must justify Petitioner's prolonged detention by establishing *clear and convincing* evidence that Petitioner is a *danger to the community* or a flight risk because of the "substantial liberty interest at stake". *Singh*, 638 F.3d at 1203. Where the Supreme Court has permitted civil detention in other contexts, it has relied on the fact that the Government bore the heavy burden of proof at least by the *clear and convincing evidence* standard. *See United States v. Salerno*, 481 U.S. 739, 750, 752 (1987) (upholding pre-trial detention where "full blown adversary hearing", requiring "clear and convincing evidence" and "neutral decisionmaker"); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (striking down civil detention scheme that placed burden on the detainee); *Zadvydas*, 533 U.S. at 692 (finding post-final-order custody review procedures deficient because, *inter alia*, they placed burden on detainee).

B. The United States Supreme Court Decision in *Mathews v. Eldridge*, 424 U.S. 319, 355 (1976) Requires the Government to Meet a Burden of Proof by *Clear and Convincing* Evidence Before Bond Can be Denied.

Petitioner points out that the Eighth Amendment states that "excessive bail shall not be required". *U.S. Const., amend. VIII.* Interestingly, prolonged detention without a proper bond hearing does not satisfy the following three-factor balancing test in *Mathews v. Eldridge*, 424 U.S. 319, 355 (1976), as: 1) the private interest that will be affected by the official action, 2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of the additional or substitute procedural safeguards, and 3) the Government's interest, including the function involved as well as the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *Mathews*, 424 U.S. 319, 355 (1976).

First, prolonged detention deprives noncitizens of a profound liberty interest. *See Diouf v.*

Holder (*Diouf III*), 634 F.3d at 1091–92 – (9th Cir. 2011). "Liberty is the norm, and detention prior to trial or without trial is the carefully limited exception". *Rodriguez v. Marin* (*Rodriguez IV*), 909 F.3d 252, 256-57 – (2019) (quoting *United States v. Salerno*, 481 U.S. 739, 755 (1987)). "Courts have found that failure to provide bond determinations in cases involving similar detention periods–i.e., 9 to 16 months–violate due process". *Singh v. Barr*, 400 F. Supp. at 1021 (collecting cases). However, courts "need not speculate whether a certain length of detention, standing alone would require an additional bond hearing", (quoting *Lopez Reyes*, 362 F. Supp. 3d at 776), for purposes of *Mathews* analysis, to find the length of a petitioner's detention "has been sufficiently long to establish a strong private interest". *Id.*

Second, the risk of erroneous deprivation of private interest exists through the "IJ's" use of a constitutionally deficient burden of proof. This is a case where Petitioner is without the assistance of counsel and is *Pro Se*, while the Government is represented by trained and qualifying attorneys and detained noncitizens are often unrepresented and frequently lack English proficiency. *See Santosky v. Kramer*, 455 U.S. 745, 763 (1982) (requiring clear and convincing evidence at parental termination proceedings because "numerous factors contribute to magnify the risk of erroneous factfinding" including that "parents subject to termination proceedings are often poor, uneducated, or members of minority groups" and "[t]he State's attorneys usually will be an expert on the issues contested").

Lastly, applying the burden on the Government imposes minimal cost or inconvenience, as the Government has access to Petitioner's immigration records and other information that it can use to make its case for continued *prolonged* detention. The Supreme Court has "uphold preventive detention based on dangerousness only when limited to especially dangerous individuals and subject to strong procedural protection". *Lopez Reyes*, 362 F. Supp. 3d at 776 (quoting *Zadvydas*,

533 U.S. at 691).

Here, Petitioner has been detained since December 3, 2024, to the present day, a total of well-over ten ("10") months, establishing that his detention is prolonged, indefinite and unconstitutional. Petitioner's detention has almost reached a year and it is categorically unconstitutional as it exceeds well-over six months. *See Demore*, 538 U.S. at 529-30 (upholding only "brief" detention under Section 1226(c), which lasts "roughly a month and a half in the vast majority of cases in which it is invoked, and about five months in the minority of cases in which the alien chooses to appeal"); *Zadvydas*, 533 U.S. at 701 ("Congress previously doubted the constitutionality of detention for more than six months"). It is undisputed that six months is a substantial period of confinement—and is the time after which additional process is required to support continued incarceration—is deeply rooted in our legal tradition, this Court should grant this Writ of Habeas Corpus. Because Petitioner's continued detention is prolonged, he warrants a fair hearing where the "IC" shifts the burden on the Respondents to justify detention.

Although, while few exceptions, "in the late 18th century in America crimes triable without a jury were for the most part punishable by no more than a six-month prison term …" *Duncan v. State of La.*, 391 U.S. 145, 161 & n.34 (1968), this Court should hold that, because Petitioner's detention is categorically prolonged, reaching almost a year, and unconstitutional, Petitioner should be afforded due process of law and be given a fair and impartial Bond Hearing where the "IC" places the burden of proof to the Respondents rather than the Petitioner. Consistent with this tradition, the Supreme Court has found six months to be the limit of confinement for a criminal offense that a Federal Court may impose without the protection afforded by jury trial. *Cheff v. Schnackenberg*, 384 U.S. 373, 380 (1966) (plurality opinion).

Petitioner cordially points out that the court has also looked to six months as a benchmark

in other contexts involving civil detention. *See McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249, 250-52 (1972) (recognizing six months as an outer limit for confinement without individualized inquiry for civil commitment). The court has likewise recognized the need for bright line constitutional rules in other areas of law. *See Maryland v. Shatzer*, 559 U.S. 98, 110 (2010) (14 days for re-interrogation following invocation of Miranda rights); *Cty. Of Riverside v. McLaughlin*, 500 U.S. 44, 55-56 (1991) (48 hours for probable cause hearing). Petitioner's prolonged detention of almost a year exceeds six months.

While requiring the government to bear its heavy burden of *clear and convincing* evidence may impose minimal cost or convenience, these costs likely outweigh by the Petitioner's significant interest in freedom from restraint. If the appropriate burden were placed upon the government, the government simply could not meet the burden under the *clear and convincing* evidence standard to establish danger sufficient to completely deny bond on the facts of this case. Thus, Petitioner's continued prolonged detention violates the United States Constitution.

Even more, it is very important to distinguish between bond proceedings and removal proceedings. Respondents asserts "[A]n alien who was not lawfully present in the United States bears the burden of establishing eligibility for relief from removal". The burden during removal proceedings to establish eligibility for relief does not justify the burden in bond proceedings where the consequences is the denial of freedom from arbitrary Government restraint.

C. Prolonged Detention Provides an Independent Basis for a New Bond Hearing Where the Government Bears the Burden of Proof and Must Prove Flight Risk and/or Danger to the Community on the Basis of the Clear and Convincing Evidence Standard.

Although Petitioner acknowledges that *Jennings v. Rodriguez*, U.S. 138 S. Ct. 830 (2018) rejected a *statutory construction* of Section 1226(a) to require a particular burden, it clearly did not overturn the constitutional due process requirement for the Government to meet the *clear and*

convincing burden of proof standard (emphasis added). Yet, Section 1226(e), the section governing judicial review of action pursuant to Section 1226(a), does not preclude challenges to the "Government's detention authority under the 'statutory framework' as a whole" or challenges to the "constitutionality of the entire statutory scheme under the Fifth Amendment". *See Jennings*, 138 S. Ct. at 841 (holding that challenges to the extent of the Government's detention authority are not precluded by § 1226(e)); *see also*, *Singh v. Holder*, 638 F. 3d 1196, 1202 (9th Cir. 2011) ("Claims that the discretionary process itself was constitutionally flawed are 'cognizable in federal court on habeas'").

Similarly, while § 1252(a)(2)(B), just like § 1226(e), precludes judicial review of discretionary action by an "IJ", "[i]t does not limit habeas jurisdiction over questions of law. *See Hernandez v. Sessions*, 872 F. 3d 976, 988 (9th Cir. 2017) (citation and quoting marks omitted); *see also Zadvydas v. Davis*, 533 U.S. 678, 388 (2001) (§ 1252(a)(2)(B)(ii)) does not bar challenges to the extent of the Attorney General's authority to detain a noncitizen, as the extent of that authority is not a matter of discretion"). Petitioner is *simply* asking for a bond hearing where the "IC" shifts the burden of proof to the Respondents, rather that place that heavy burden on Petitioner, and where it comports with Due Process of Law. Petitioner respectfully notes, and this District Court should hold, that "[T]he overwhelming majority of district courts have … held that in bond proceedings under Section 1226(a), due process requires the Government to bear the burden of justifying detention by *clear and convincing evidence*". *Hernandez-Lara v. Immigration & Customs Enf't, Acting Dir.*, No. 19-CV-394-LM, 2049 WL 3340697, at *3 (D. N.H. July 25, 2019) (collecting cases) (emphasis added). In fact, it is important to point out that most recently, "the Ninth Circuit noted that the Supreme Court "'repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty'". *Id.* (quoting *Addington v. Texas*,

441 U.S. 418, 425, 427 (1979) (concluding that the individual's interests were of such weight and gravity that due process requires the state to justify confinement by proof *more substantial than mere preponderance of the evidence*) (emphasis added). Therefore, an impartial and fair Bond Hearing applying the standard of proof by *clear and convincing* evidence imposed upon the Government and where the Respondents must prove flight risk and danger to the community under the *clear and convincing* standard is warranted. This is a special case where if the "IC" shifts the burden of proof to the Respondents, instead of the Petitioner, the outcome would be different.

D. Petitioner is Entitled to a Fair and Impartial Bond Hearing Because His Removal from the United States is Not Reasonably Foreseeable and He Has Been Depraved of His Liberty

Although the Respondents may argue that Petitioner's detention is not "indefinite" and the likelihood of removal is in the foreseeable future, Petitioner has been detained for almost a year, ten-months. There is no requirement that detention be indefinite in order for there to be a deprivation of liberty. Petitioner has been denied his liberty without the opportunity of an impartial and fair bond hearing where the "IC" holds the Respondents to meet their heavy burden of proof.

The Respondents may argue that Petitioner is at fault for his extended length of detention due to his litigation. Petitioner is entitled to exhaust all legal rights. Petitioner exhausting his legal rights does not entitle the Respondents to deprave him of his liberty without Due Process of Law.

Petitioner's immigration case in currently under litigations with the Ninth Circuit. There is no specific time-frame for when the case will be fully resolved. Petitioner's continuance of prolonged detention without a fair bond hearing where the heavy burden is on the Respondents to prove by *clear and convincing* evidence that Petitioner is a flight risk of presents a current danger to the community, categorically violates the Fifth and Eighth Amendment.

E. "*Danger to the Community*" Cannot be Established by the Appropriate Legal Standard.

Any argument that "*danger*" to the community is established by the facts of this case is clearly erroneous, and by any legal standard is devoid of logic, reason, and facts to support such a conclusion. The Respondents may seek to characterize Petitioner's challenge as purely discretionary. As the Honorable U.S. District Court in *Griselda Negrete Vargas*, *supra,* found: "The Ninth Circuit has explained that *Casas-Castrillon* and *Guerra* contemplate that criminal history alone may be insufficient to justify detention" (emphasis added). *Singh*, 638 F.3d at 1260. "The *Guerra* factor most pertinent to assessing dangerousness' is the detainee's 'criminal record, including the *extensiveness* of criminal activity, the *recency* of such activity, and the *seriousness* of the offenses". *Id.* (citing *Guerra*, 20 I. & N. Dec. at 40) (emphasis added).

> "Indeed, not all criminal convictions conclusively establish that an alien presents a danger to the community, even where the crimes are serious enough to render the alien removable. *Cf. Foucha*, 504 U.S. at 82-83, 112 S. Ct. 1780 (requiring a showing of dangerousness beyond that "of any convicted criminal" to justify civil detention of the criminally insane). For example, some orders of removal may rest on convictions for relatively minor, non-violent offenses such as petty theft and receiving stolen property. Moreover, a conviction could have occurred years ago, and the alien could well have led an entirely law-abiding life since then. In such cases, denial of bond on the basis of criminal history alone may not be warranted". *Id.* at 1206.

If the "IC" placed the heavy burden of proof on the Respondents, rather than on the Petitioner, there is a realistic probability that the "IC" it would find that Petitioner does not pose a danger to persons or property. Petitioner has no such controlled substance trafficking offenses or

anything close to relevant nor does he have an extensive criminal history here in the United States. Petitioner does have a felony conviction in Colombia; however, Petitioner maintains those prior convictions are too stale and too trivial to support that he presents public danger. In contrast, Petitioner has never been arrested and has no convictions in the United States, completed educational courses, has focused on independent studies and has led an entirely law-abiding lifestyle since his conviction.

This is demonstrated even while in custody at Nevada Southern Detention Center where Petitioner lacks disciplinary actions against him and is recognized as a peacemaker. Petitioner is not a threat to national security, has no history of such activity and presents no current danger to public safety. Even more, Petitioner does not have any pending criminal charges as the record clearly reflects that Petitioner is not under any criminal proceedings and is not under any order of parole or probation by the Department of Parole and Probation in the United States by any State. Petitioner respectfully reiterates that he has not been convicted of any controlled substance trafficking offenses, involved in any terrorist activities or anything close to relevant. Petitioner does not have a lengthy criminal record and is not a habitual criminal and points out that the Respondents are silent on this issue. Petitioner reiterates that his Colombian offenses are too remote and too stale to be used to demonstrate that he is a danger to the community. Petitioner's past conduct in Colombia, though reprehensible, simply does not warrant the harsh sanction available under the mandatory detention statute. Therefore, the adjudication of denying bond based on a Colombian offense serves neither the purposes of the INA statute nor the interests of justice.

Further, Petitioner has not participated in any criminal street gang and does not have any gang related convictions as defined under 18 U.S.C. § 521(a). Petitioner seeks to remain in the US in a lawful manner with his family and, in good faith seeks protection relief. Hence, Petitioner is

neither a flight risk nor a danger to the community. Here, Respondents cannot prove so by *clear and convincing* evidence, or any standard of proof, that Petitioner should remain unlawfully detained without a fair Bond Hearing where the "IC" holds Respondents to meet their heavy burden of proof. Petitioner's bond request was denied on the *sole* basis of his Colombian convictions. Thus, if the "IC" properly shifts the burden of proof over to the Respondents rather than the Petitioner, then the outcome would be different.

F. Due Process of Law

Whether Petitioner's mandatory detention is authorized under Title 8 of the United States Code Section 1226 or 1225, Petitioner's continued prolonged detention *must* comport with due process in any event. Petitioner argues that his detention has become prolonged and violates his due process rights; he requests custody release or a new bond hearing where the "IC" upholds the Respondents to meet their heavy burden of proof and where the hearing comports with due process. The Respondents may counter that Petitioner's continued mandatory detention is unreasonable. For the reasons discussed herein, this Court should conclude that Petitioner's detention has become unreasonably prolonged and indefinite and the Constitution therefore does, at this time, require that Petitioner be provided release or a new bond hearing where the "IC" shifts the heavy burden of proof over to the Respondents.

In this particular case, Petitioner has not been convicted of certain crimes here in the United States. As such, this Court should grant this Habeas to ensure Petitioner's Due Process rights is protected and fully resolve this case. Petitioner *only* asks for a bond hearing where the Respondents shoulder the heavy burden of proof on the basis of the *clear and convincing evidence* standard and where it comports with due process of law.

Petitioner's continued detention of almost a year is unreasonable. Since *Demore*, the Ninth

Circuit Court has expressed "grave doubts that any statute that allows for arbitrary prolonged detention without any process in constitutional or that those who founded our democracy precisely to protect against the government's arbitrary deprivation of liberty would have thought so." *Rodriguez v. Marin* ("*Rodriguez IV*"), 909 F.3 252, 256 (9th Cir. 2018).

Overwhelmingly, district courts considering the constitutionality of prolonged mandatory detention—including other judges in the West District of Washington—"agree that prolonged mandatory detention pending removal proceedings, without a bond hearing, 'will—at some point––violate the right to due process'". *Martinez v. Clark*, No. C18-1669-RAJ-MAT, 2019 U.S. Dist. LEXIS 197895, 2019 WL 5968089, at *6 (W.D. Wash. May 23, 2019), *Report & Recommendation adopted*, 2019 U.S. Dist. LEXIS 196836, 2019 WL 5962685 (W.D. Wash. Nov. 13, 2019) (quoting *Sajous v. Decker*, No C18-2447, 2018 U.S. Dist. LEXIS 86921, 2018 WL 2357266, at *8 (S.D.N.Y. May 23, 2018), and collecting cases); *see also Banda v. McAleenan*, 385 F. Supp. 3D 1099, 1106 (W.D. Wash. 2019) (Robart, J.) ("[U]nreasonably prolonged detention under [8 U.S.C.] § 1225(b) without a bond hearing violates due process.") *Djelassi*, 434 F. Supp. 3d at 923-24 (granting habeas petition and ordering bond hearing for noncitizen whose mandatory detention had become unreasonably prolonged). This follows that Petitioner's prolonged mandatory detention, without an impartial bond hearing, has reached the point that it violates the right to Due Process. *See generally*, *Martinez v. Clark*. Given Petitioner's prolonged detention of ten-months, almost a year, this Court should grant this Habeas Petition.

i. TEST TO DETERMINE REASONABLENESS OF PROLONGED DETENTION

Courts in West District of Washington have adopted a "multi-factor analysis that many other courts have relied upon to determine whether § 1226(c) detention has become unreasonable." *Martinez*, 2019 U.S. Dist. LEXIS 197895, 2019 WL 5968089 at *9. Those factors include; (1) the

total length of detention to date: (2) the likely duration of future detention; (3) whether the detention will exceed the time the petitioner spent in prison for the crime that made him [or her] removable; (4) the nature of the crimes the petitioner committed; (5) the conditions of detention; (6) delays in the removal proceedings caused by the petitioner, (7) delays in the removal proceedings caused by the Government; and (8) the likelihood that the removal proceedings will result in a final order of removal. *Id.* (citing, *inter alia*, *Cabral v. Decker*, 331 F. Supp. 3d 255, 261 (S.D.N.Y. 2018)). The same factors should hold true for detention under 8 U.S.C. § 1226(a).

These factors are derived from the Supreme Court's decisions in *Demore* and *Zadvydas v. Davis*, 533 U.S. 678, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001), and pre-*Jennings* circuit court cases holding, as a matter of constitutional avoidance, that § 1226(c) implicitly authorizes detention for only a reasonable amount of time. *See Reid v. Donelan*, 819 F. 3d 486, 494 (1st Cir. 2016), *vacated in light of Jennings*, 2018 U.S. App. LEXIS 23859, 2018 WL 4000993 (1st Cir. May 11, 2018); *Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 222-23 (3d Cir. 2011), *abrogated by Jennings*, 138 S. Ct. 830; *Ly v. Hansen*, 351 F.3d 263, 269-70 (6th Cir. 2003), *abrogated by Jennings*, 138 S. Ct. 830; *Sopo v. U.S. Att'y Gen.*, 825 F.3d 1199 (11th Cir. 2016), *vacated as moot*, 890 F.3d 952 (11th Cir. 2018). Because Petitioner's continuance of prolonged detention of almost two years has become unreasonable, this Court should adopt the *Martinez* factor analysis in this special case.

The Respondents may analyze the *Martinez* factors and may argue whether they support its position, as they may argue that Petitioner's detention should instead be analyzed under the three-factor test outlined in *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976). Interestingly, *Mathews* "requires considering (1) the private interest affected, (2) the government's interest, and (3) the value added by additional or substitute procedural safeguards in

the situation before the court." *Banda*, 385 F. Supp. 3d at 1106 (citing *Mathews*, 424 U.S. At 334).

However, in *Banda*, the Honorable James L. Robart considered but declined to apply *Mathews*, explaining: Courts apply the *Mathews* test to resolve the question of "whether the administrative procedural provided . . . are constitutionally sufficient." 424 U.S. at 334. Thus, the *Mathews* test balances the benefits or burdens of "additional or substitute procedural safeguards." *Id.* at 335. It does not resolve the more fundamental issue of whether any procedure–such as a bond hearing–must be provided. Petitioner's prolonged detention of almost a year puts in question the fundamental fairness of his bond proceedings. Therefore, Magistrate Judge Theiler correctly determined that the *Mathews* test is not "particularly probative of whether prolonged mandatory detention has become unreasonable in a particular case." (R&R at 19). *Id.* This Court should find and hold that the *Martinez* multi-factor test applied in the West Washington District, rather than the *Mathews* test, should apply here.

If this District Court therefore applies the test enunciated in *Martinez*, which is applicable in this case, then this Court should consider each factor below and concluded that the factors weigh in favor of granting Petitioner. Accordingly, Petitioner simply seeks and only asks for the "IC" to properly place the burden of proof on the Respondents instead of the Petitioner at the bond hearing. Moreover, the *Martinez* test follows:

1. LENGTH OF DETENTION TO DATE

The length of detention is the most important factor. E.g., *Martinez*, 2019 U.S. Dist. LEXIS 197895, 2019 WL 5968089, at *9; *Sajous*, 2018 U.S. Dist. LEXIS 86921, 2018 WL 2357266, at *10 (citing *Zadvydas*, *Sopo*, and *Diop*). The longer mandatory detention continues beyond the "brief" period authorized in *Demore*, the harder it is to justify. *See, e.g.*, *Martinez*, 2019 U.S. Dist. LEXIS 197895, 2019 WL 5968089, at *9 (nearly 13-month detention weighed in favor of granting

a bond hearing); *Liban M.J. v. Sec'y of Dep't of Homeland Sec.*, 367 F. Supp. 3d 959, 963-64 (D. Minn. 2019) ("Although there is no bright-line rule for what constitutes a reasonable length of detention, petitioner's [32-month] detention has lasted beyond the 'brief' period assumed in *Demore*."); *De Oliveira Viegas v. Green*, 370 F. Supp. 3d 443, 449-50 (D.N.J. 2019) (courts in the District of New Jersey generally deny habeas relief where the petitioner has been detained for a year or just over a year, but granting relief where petitioner was detained 15 months). Petitioner has been held in ICE custody since December 3, 2024, more than ten-months to date, and detention has become unreasonable and puts in question the fundamental fairness of his bond proceedings. Therefore, this factor strongly weighs in Petitioner's favor and in granting his petition.

2. LIKELY DURATION OF FUTURE DETENTION

The Court next "considers how long the detention is likely to continue absent judicial intervention; in other words, the anticipated duration of all removal proceedings including administrative and judicial appeals." *Martinez*, 2019 U.S. Dist. LEXIS 197895, 2019 WL 5968089, at *9. It is true that the IJ and BIA denied Petitioner's bond appeal, but on the sole basis of his conviction in Colombia, which is too remote and too stale to support that he presents a danger to the community in the United States. The IJ and BIA also denied Petitioner's appeal in removal proceedings. Subsequently, Petitioner moved for judicial review, which is currently pending and moved for a stay of removal with the Ninth Circuit Court. The docket in Petitioner's appeal shows that the parties are in the judicial review process and that Petitioner has a stay, pending judicial review. Most cases are decided withing three to twelve months of oral argument. *See* U.S. Court of Appeals for the Ninth Circuit, *Frequently Asked Questions*, www.ca9.uscourts.gov/content/faq.php (last visited 11/1/21). Here, Petitioner's case might be decided quickly, *but* it is also possible the Ninth Circuit will not decide his case for another year.

Thus, this factor definitively weighs in Petitioner's favor.

3. CRIMINAL HISTORY

Third and fourth, the Court reviews the length of detention compared to Petitioner's criminal sentence and the nature of his crimes. *Martinez*, 2019 U.S. Dist. LEXIS 197895, 2019 WL 5968089, at *9; *Cabral*, 331 F. Supp. 3d at 262. The relevance of these factors is they are suggestive of whether the detainee, such as Petitioner, is a danger to the community or a risk of flight such that a bond hearing would be futile. *See Cabral*, 331 F. Supp. 3d at 262. Petitioner has no pending criminal charges nor pending criminal sentence, whether suspended or not, in the United States. Aside from Petitioner having committed a crime in Colombia, Petitioner has not recently committed any serious crime in the United States. Petitioner points out that the severity and *recency* of the criminal conduct must be taken into account when deciding if Petitioner qualifies for bond. This Court should also consider *changes in circumstances* that *would make recidivism less likely.*

Even though the Court may consider Petitioner's criminal record in Colombia when determining whether his detention is necessary to protect public safety, *see Matter of Guerra*, 24 I.&N. 37, 40 (BIA 2006), "criminal history alone will not always be sufficient to justify denial of bond on the basis for dangerousness". *Singh*, 638 F.3d at 1206. Petitioner's prior offenses are in Colombia and are too remote, too stale and too trivial where the mandatory detention would not serve the purposes of the INA statue, mandatory detention statute or the interests of justice.

Although Petitioner was convicted of a crime in Colombia, he served his sentence and upon the completion of his sentence, he was release and has been living a law abiding and productive lifestyle. The Respondents deliberately ignores this fact and badly intends to portrait Petitioner as a harden criminal. Even if this Court finds Petitioner dangerous based on his conviction in

Colombia, Petitioner points to relevant precedents and case laws such as *Singh*, *Guerra*, and *Foucha.*

Also, Petitioner relies on the underlying fact that not all criminal convictions conclusively establish that Petitioner presents a danger to the community, even where the crimes are serious enough to render the alien removable. *Cf. Foucha*, 504 U.S. at 82-83, 112 S. Ct. 1780 (requiring a showing of dangerousness beyond that "of any convicted criminal" to justify civil detention of the criminally insane). Petitioner again points out that when the prior offenses are too stale or too trivial, it should not warrant the harsh punishment of mandatory detention where its serves neither the purpose of the INA statute, mandatory statute (§ 1226) nor the interests of justice.

Petitioner has led an entirely law-abiding lifestyle, even while detained. At the detention center, Petitioner has remained in good standing, volunteered for the workers program and lacks disciplinary actions. Thus, denial of bond on the basis of criminal history alone is not warranted. *Id.* at 1206. *See Singh*, 638 F.3d at 1206. Because Petitioner has no criminal offenses in the US that are violent or serious, this factor sharply weighs in Petitioner's favor.

4. CONDITIONS OF DETENTION

Next, the Court considers the conditions at the NSDC where Petitioner is detained. *Martinez*, 2019 U.S. Dist. LEXIS 197895, 2019 WL 5968089, at *9. "The more that the conditions under which the [noncitizen] is being held resemble penal confinement, the stronger [the] argument that he is entitled to a bond hearing." *Jamal A. v. Whitaker,* 358 F. Supp. 3D 853, 860 (D. Minn. 2019) (quoted source omitted). Petitioner is housed in a prison-like setting which highly resembles penal confinement. Petitioner lacks English proficiency which has caused delays in him receiving, reading, understanding and responding to his legal mail when it is all in English. Therefore, even at minimum, this factor either slightly favors the Petitioner or should not favor neither party.

5. DELAYS IN REMOVAL PROCEEDINGS

Under the sixth and seventh factors, the Court considers "the nature and extent of any delays in the removal proceedings caused by the Petitioner and the government, respectively." *Martinez*, 2019 U.S. Dist. LEXIS 197895, 2019 WL 5968089, at *10. "Petitioner is entitled to raise legitimate defenses to removal . . . and such challenges to his removal cannot undermine his claim that detention has become unreasonable." *Liban M.J.*, 367 F. Supp. 3d at 965 (citing *Hernandez v. Decker*, No. 18-5026, 2018 U.S. Dist. LEXIS 124613, 2018 WL 3579108, at *9 (S.D.N.Y. July 25, 2018). ("[T]he mere fact that a noncitizen opposes his removal is insufficient to defeat a finding of unreasonably prolonged detention, especially where the Government fails to distinguish between bona fide and frivolous arguments in opposition.")). Petitioner's challenge to his removal are meritorious and it should be point out that the Ninth Circuit granted a stay.

In this special case, this District Court, may be "sensitive to the possibility that dilatory tactics by the removable [noncitizen] may serve not only to put off the final day of deportation, but also compel a determination that the [noncitizen] must be released because of the length of his [or her] incarceration." *Ly*, 351 F.3d at 272; *see also Sopo*, 825 F.3d at 1218 ("Evidence that the [noncitizen] acted in bad faith or sought to deliberately slow the proceedings in hopes of obtaining release cuts against the [noncitizen]."). The Respondents may argue that this factor weighs against finding detention unreasonable when Petitioner "has 'substantially prolonged his stay by abusing the processes provided'," *but* not when he "simply made use of the statutorily permitted appeals process." *Hechavarria v. Sessions*, 891 F.3d 49, 56 n.6 (2d Cir. 2018) (quoting *Nken v. Holder*, 556 U.S. 418, 436, 129 S. Ct. 1749, 173 L. Ed. 2d 550 (2009)); *see also Campbell v. Barr*, 387 F. Supp. 3d 286, 297 n.7 (W.D.N.Y. 2019). As it is relevant here, Petitioner is entitled to make use of the statutorily permitted appeals process as he is statutorily eligible to seek protection relief. Petitioner

has brought legitimate collateral challenges to his removal order. Even as a *pro se* litigant, *none* of his defenses or challenges should undermine his claim that detention has become unreasonable. *Liban M.J.*, 367 F. Supp. 3d at 965.

Further, the risk of error is heavily great because the Respondents is represented by trained and qualified attorneys while Petitioner is unrepresented and lacks English proficiency. *See Santosky v. Kramer*, 455 U.S. 745, 763 (1982). Here, the Respondents has full access to the Petitioner's immigration records and other information that it can use to make its case for continued prolong detention while Petitioner is left without the assistance of counsel.

Moreover, this Court should hold that Due Process also requires full consideration of non-punitive alternatives to detention. The primary purpose of immigration detention is to ensure a noncitizen's appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related to this purpose if there are alternative conditions of release that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Petitioner was released on his own recognizance and ordered to appear on October 5, 2026 at an Immigration Court in West Valley, Utah. On December 3, 2024, Petitioner was detained by agents of Enforcement and Removal Operations, Immigration and Customs Enforcement ("ERO/ICE"). Yet, the arrest has not been justified as Petitioner has never failed to appear to any of his ICE appointments nor his court hearings. This calls into question the fundamental fairness towards Petitioner as he has lived a law-abiding lifestyle and has no criminal arrests or any pending charges in the United States.

As noted, Petitioner is detained in prison-like conditions that severely hamper his ability to obtain legal assistance, gather evidence, and prepare for any defense. Petitioner's administrative appeal, judicial review and motion to stay removal were made in good faith, and any delay has occurred as a result of litigating favorable and substantive issues affecting removal. Petitioner has

a stay by the Ninth Circuit Court. Because Petitioner has brought legitimate legal defenses and brought collateral legal challenges in good faith, this factor weighs in Petitioner's favor.

6. LIKELIHOOD REMOVAL PROCEEDINGS WILL RESULT IN A FINAL ORDER OF REMOVAL

Finally, the Court considers "the likelihood that the removal proceedings will result in a final order of removal." *Liban M.J.*, 367 F. Supp. 3d at 965. "In other words, the Court considers whether the noncitizen has asserted any defenses to removal." *Martinez*, 2019 U.S. Dist. LEXIS 197895, 2019 WL 5968089, at *10; *Sajous*, 2018 U.S. Dist. LEXIS 86921, 2018 WL 2357266, at *11. "Where a noncitizen has not asserted any grounds for relief from removal, presumably the noncitizen will be removed from the United States, and continued detention will at least marginally serve the purpose of detention, namely assuring the noncitizen is removed as ordered." *Martinez*, 2019 U.S. Dist. LEXIS 197895, 2019 WL 5968089, at *10 (citing *Sajous* and *Demore*). "But where a noncitizen has asserted a good faith challenge to removal, 'the categorical nature of the detention will become increasingly unreasonable'." *Id.* (quoting *Reid* 819 F.3d at 499-500).

Petitioner has brought legitimate collateral legal challenges to his removal order, in good faith, to the extent that the Respondents have not distinguish between bona fide and frivolous arguments in opposition. Thus, it is undisputed that Petitioner's ten-months-to-date of continued prolonged detention has categorically become increasingly unreasonable and puts in question his Due Process.

More fundamentally, Petitioner is "entitled to remain in the United States" where he brings collateral challenges, in good faith, to his removal order. In the REAL ID Act of 2005, Congress amended the Immigration and Nationality Act to "expressly eliminate[] habeas review over all final orders of removal . . .." *A. Singh v. Gonzales*, 499 F.3d 969, 977 (9th Cir. 2007). It provided that "a petition for review filed with an appropriate court of appeals . . . shall be the sole and

exclusive means for judicial review of an order of removal. 8 U.S.C. § 1252(a)(5); *see Martinez-Rosas v. Gonzales*, 424 F.3d 926, 929 (9th Cir. 2005) (under REAL ID Act, a petition for review in the court of appeals "is now the exclusive means for challenging final removal orders by the [Board of Immigration Appeals ("BIA")] . . .."). The REAL ID Act was "not intended to 'preclude habeas review over challenges to detention that are independent of challenges to removal orders'." *V. Singh v. Holder*, 638 F.3d 1196, 1211 (9th Cir. 2011) (quoting H.R. Rep. No. 109-72 at 175).

Accordingly, as a general rule, Petitioner "may continue to bring collateral legal challenges to the Attorney General's detention authority . . . through a petition for habeas corpus." *Id.* (quoting *Casas-Castrillon v. Dep't Homeland Sec.*, 535 F.3d 942, 946 (9th Cir. 2008)). But while the courts must be careful "not to unduly circumscribe their habeas jurisdiction," they "must also avoid the opposite pitfall, and recognize the lack of jurisdiction where a habeas petition 'directly implicate[s] the order of removal'. *V. Singh*, 639 F.3d at 1211 (quoting *Nnadika v. Att'y Gen. of U.S.*, 484 F.3d 626, 632 (3d Cir. 2007).

As noted above, Petitioner has brought bona fide collateral legal challenges and legitimate defenses to his removal order. Petitioner's removal order is still under judicial review before the Ninth Circuit. *See Herrera-Ramirez,* Case No. 25-4313. Realistically, there is no telling when the Ninth Circuit will reach a decision. It is unclear whether the case would result in a final order of removal. Thus, at best, this factor slightly favors the Respondents, or should not favor either party.

7. WEIGHING IN THE FACTORS

Here, most factors weigh in favor of Petitioner and in granting the petition. This Court should conclude that, at this point, Petitioner's mandatory detention has been prolonged, unreasonable and unlawful. As such, Petitioner warrants a new bond hearing where the "IC" shifts the burden of proof to the Respondents under the *clear and convincing* legal framework.

ii. PETITIONER IS ENTITLED TO RELEASE

Alternatively, Petitioner requests release from detention. Petitioner is entitled to release if he can show his detention is indefinite within the meaning of the Supreme Court's decision in *Zadvydas*. *See Prieto-Romero v. Clark*, 534 F.3d 1053, 1062-63 (9th Cir. 2008) (applying *Zadvydas* to habeas petitioner who was subject to § 1226(a) detention). In *Prieto-Romero*, the Ninth Circuit held the petitioner's detention was not indefinite because the Government could repatriate him to Mexico if his pending petition for review was unsuccessful. *Id.* Given that Petitioner is in the Ninth Circuit, this is a special case where there is no strong indication that the Government will be able to remove him to the country of Colombia in the reasonable foreseeable future if he is ultimately ordered removed. Again, Petitioner's case might be decided quickly, *but* it is also possible the Ninth Circuit will not decide his case for another year or so, especially in the event of a remand.

Accordingly, Petitioner's removal is indefinite and his prolonged detention is categorically unreasonable, thus making it unlawful. Thus, Petitioner is entitled to an order of release or, at the very least, this Court should order Respondents to schedule a bond hearing where they bear the burden of proof, as required by law, under the *clear and convincing evidence* standard and in line with the Supreme Court's reasoning in *Addington*. The hearing should comport with due process.

In turn, Petitioner respectfully notes that Due Process likewise requires consideration of his ability to pay a bond. "Detention of an indigent 'for inability to post money bail' is impermissible if the individual's 'appearance at trial could reasonably be assured by one of the alternate forms of release'." *Id.* at 990 (quoting *Pugh v. Rainwater*, 572 F.2d 1053, 1058 (5th Cir. 1978) (en banc). It follows that—in determining the appropriate conditions of release for immigration detainees like Petitioner—Due Process requires "consideration of financial circumstances and alternative conditions of release" to prevent against detention based on poverty.

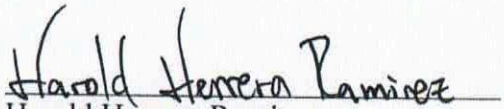
Id. Currently, Petitioner's detention has caused his family to experience limited finances to post an excessive bond because of his prolonged detention. Overall, Petitioner's continued detention has become unlawful. Also, the Respondents argue that this Court lacks jurisdiction based on the issue that the current warden is not named in this action. This Court should conclude that it holds proper jurisdiction over this Habeas matter and this Court should reject the Respondents position.

III. CONCLUSION

Based on these laws and facts, Petitioner is entitled to a Writ of Habeas Corpus before this Court because his constitutional rights are being violated due to a prolonged unlawful civil detention without bond where the Respondents shoulder the burden of proof and where it comports with due process. Further, this Court should issue a Writ of Habeas Corpus to terminate his unlawful prolonged detention. Therefore, this Court should grant this Writ of Habeas Corpus.

Respectfully submitted on this 27th day of October, 2025.

Executed in Pahrump, Nevada.



Harold Herrera-Ramirez
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CERTIFICATE OF SERVICE

I, Harold Herrera-Ramirez, hereby certify that on the date indicated below I served the Clerk of the Court for the United States District Court for the District of Nevada a true and complete copy of the foregoing documents, specifically Petitioner's Reply, by placing it in a pre-paid envelope in the institution's internal legal mail system and mailing it to the following address:

Clerk, U.S. District Court for the
District of Nevada
333 South Las Vegas Blvd.
Las Vegas, Nevada 89101

Respectfully submitted and executed on this 27th day of October, 2025.

Harold Herrera Ramirez
Harold Herrera-Ramirez
Alien No. [redacted]
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ACKNOWLEDGEMENT AND VERIFICATION

Under penalty of perjury, the undersigned declares that he is the named Petitioner appearing *Pro Se* in the foregoing Reply. I have read the foregoing petition and its contents. The statements in the Reply are true and correct to the best of my knowledge, except as to any statements alleged on information and belief, and as to those statements, I believe them to be true.

DATED this 27th day of October, 2025.

Harold Herrera Ramirez

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