UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Lorne SCOTT,

Petitioner,

v.

Camilla WAMSLEY , et al.,

Respondents.

Case No. 2:25-cv-1819

MEMORANDUM OF LAW IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS AND MOTION FOR ORDER TO SHOW CAUSE AND EXPEDITED CONSIDERATION

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INTRODUCTION

Petitioner Lorne Scott (Mr. Scott), a lawful permanent resident of the United States, has been held in Immigration and Customs Enforcement (ICE) custody for over eighteen months—including for over six months after he ceased to be removable from the United States. In February 2025, the Superior Court of California vacated the sole criminal conviction that the Department of Homeland Security (DHS) relied on to pursue Mr. Scott's removal from the United States and subject him to mandatory detention during his removal proceedings. Nevertheless, an immigration judge (IJ) recently determined that Mr. Scott remains subject to mandatory detention, even though there is no basis *whatsoever* to remove him, much less to continue detaining him.

The Immigration and Nationality Act (INA), the Due Process Clause, and binding precedent make plain that Mr. Scott's continued detention is unlawful and compel his immediate release. Expeditious action is also needed because ICE has failed to provide adequate medical care for Mr. Scott, who suffers from Crohn's disease, a chronic illness that results in daily physical symptoms including nausea, vomiting, diarrhea, and fatigue. This lack of treatment is in stark contrast to the medical treatment that Mr. Scott received during his time in pre-trial and criminal custody, which had led to remission of his Crohn's disease for over five years. Notably, ICE has dismissed his requests for medication and dietary accommodation as unadvisable or unattainable in ICE custody.

Accordingly, Petitioner respectfully requests that this Court immediately issue an order to show cause requiring Respondents to justify his continued detention, resolve this petition on an expedited basis, and grant the writ by declaring his continued detention unlawful and ordering Respondents to release Mr. Scott from ICE custody.

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STATEMENT OF FACTS

I. Mr. Scott's Personal History

Mr. Scott entered the United States as a lawful permanent resident on October 19, 2012. Decl. of Ilyce Shugall (Shugall Decl.) ¶ 4; Ex. A; Ex. F ¶ 2; Ex. B ¶ 4.[1] Mr. Scott immigrated via his father, who has since passed away. Ex. F ¶ 2. Except for brief departures, the last of which occurred in 2015, Mr. Scott has resided in the United States ever since, for nearly thirteen years. Shugall Decl. ¶ 4; Ex. F ¶ 2.

Mr. Scott has extensive family in the United States. Ex. F ¶ 3. His mother is a lawful permanent resident. *Id.* He has one full biological sister who is a U.S. citizen, as well as five half-siblings who are also U.S. citizens. *Id.*

On January 31, 2020, Mr. Scott was convicted in the Superior Court of California for the County of Nevada of a violation of Cal. Penal Code § 211. *Id.* ¶ 4. The Superior Court sentenced Mr. Scott to six years for the conviction and an additional three years for an enhancement under Cal. Penal Code § 12022.5(a). Shugall Decl. ¶ 10; Ex. B; Ex. F ¶ 4. Mr. Scott served approximately three years of his sentence in three fire camps[2] located in Emmett, Mariposa, and Humbolt County, California. Ex. F ¶ 5.

Because Mr. Scott's guilty plea was not knowing or voluntary, he sought relief under California's post-conviction relief statute, Cal. Penal Code § 1473.7(a)(1). Ex. B. In February

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[1] All exhibits referenced in this memorandum are exhibits to the Declaration of Ilyce Shugall.

[2] The California Department of Corrections and Rehabilitation (CDCR) Fire Camp program places minimum-security incarcerated individuals in conservation camps, where they assist the California Department of Forestry and Fire Protection and local agencies in wildfire suppression, emergency response, and conservation projects. *See* Conservation (Fire) Camps Program, Cal. Dep't of Corr. & Rehab., https://www.cdcr.ca.gov/facility-locator/conservation-camps/ (last visited Sept. 18, 2025).

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2025, the Superior Court vacated Mr. Scott's conviction. *Id.* The Ninth Circuit has recognized that a vacatur under California Penal Code § 1473.7(a)(1) effectively sets a conviction aside for immigration purposes. *See Bent v. Garland*, 115 F.4th 934, 941 (2024). Mr. Scott entered a new plea to a violation of Cal. Penal Code §§ 459 and 25400(a)(3), neither of which make him deportable under 8 U.S.C. § 1227. Shugall Decl. ¶ 11; *see also Sessions v. Dimaya,* 584 U.S. 148, 174–75(2018); *Medina-Lara v. Holder*, 771 F.3d 1106, 1116 (9th Cir. 2014). As a result, Mr. Scott is no longer removable from the United States and will continue to retain his lawful permanent resident status.

II. Mr. Scott's Removal and Bond Proceedings

ICE detained Mr. Scott on March 12, 2024, after he completed the sentence for his since-vacated conviction and was paroled from state prison. Shugall Decl. ¶¶ 1, 5. That same day, ICE also issued Mr. Scott a Notice to Appear (NTA) initiating removal proceedings, alleging Mr. Scott's since-vacated conviction as the sole basis for deportation and charged him with removability under 8 U.S.C. § 1227(a)(2)(A)(iii). *Id.* Mr. Scott has remained in ICE custody for more than eighteen months.

The IJ sustained the allegation and charge and found Mr. Scott removable as charged. Shugall Decl. ¶ 7; Ex. C. Mr. Scott applied for deferral of removal under the Convention Against Torture (CAT). *Id.*; *see also* 8 C.F.R. § 1208.17. On December 16, 2024, the IJ denied Mr. Scott's application for CAT and ordered him removed to Jamaica. Shugall Decl. ¶ 8; Ex. C. On January 8, 2025, Mr. Scott filed a notice of appeal with the Board of Immigration Appeals (BIA). *Id.* That appeal remains pending. *Id.*

On March 4, 2025, after the Superior Court vacated the conviction that formed the basis for his removal proceedings, Mr. Scott filed a motion to remand with the BIA. Shugall Decl. ¶ 11. The motion seeks remand to the IJ for termination of removal proceedings, as Mr. Scott is

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no longer removable as charged by DHS. Indeed, he is not removable on *any* ground. That motion remains pending before the BIA. *Id.*

On July 30, 2025, Mr. Scott filed a motion for a bond hearing with the Tacoma Immigration Court, raising a challenge under *Matter of Joseph*, 22 I. & N. Dec. 799 (BIA 1999). Shugall Decl. ¶ 12; Ex. C. In *Matter of Joseph*, the BIA held that a noncitizen may contest the government's claim of mandatory detention under 8 U.S.C. § 1226(c) by demonstrating that the government is "substantially unlikely" to prevail on its charges of removability. 22 I. & N. Dec. 799 at 800, 806. In his motion, Mr. Scott argued that, given the vacatur of his conviction, DHS was "substantially unlikely" to prove its charges of removability in his case and could no longer detain him under 8 U.S.C. § 1226(c). Ex. C. Instead, Mr. Scott's detention is governed by 8 U.S.C. § 1226(a). That statutory provision allows the immigration court to consider release on bond for noncitizens in ICE custody.

On August 6, 2025, the IJ ruled that he lacked jurisdiction to consider Mr. Scott's release on bond, concluding that Mr. Scott is detained under 8 U.S.C. § 1226(c) despite the vacatur of his conviction. Ex. G, H. The IJ inexplicably relied on the fact that section 1226(c)(1)(A) authorizes mandatory detention for a noncitizen who "*is* inadmissible *by reason of* having committed any offense covered in section 1182(a)(2)" even though Mr. Scott is not subject to the grounds of inadmissibility. Ex. H.

On August 13, 2025, Mr. Scott appealed the IJ's custody determination to the BIA. Shugall Decl. ¶ 17. The appeal remains pending. *Id.* Administrative appeals of IJ custody decisions last, on average, over six months. *See Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239, 1253 (W.D. Wash. 2025).

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III. Mr. Scott's Chronic Medical Condition

Over the last year of Mr. Scott's detention, he has battled severe symptoms of Crohn's disease, including nausea, vomiting, diarrhea, and fatigue. Shugall Decl. ¶ 20; Ex. D; Ex. F ¶ 9. These symptoms are especially difficult to manage in a carceral setting. Despite repeated requests by Mr. Scott and his counsel for medical attention and appropriate treatment, ICE has failed to provide him with appropriate medical care or dietary accommodation. Shugall Decl. ¶ 21; Ex. F ¶ 9.

While Mr. Scott was in pre-trial custody, he received treatment at the Sierra Nevada Hospital, in Nevada County, California. Shugall Decl. ¶ 13; Ex. D. The treatment included infusion therapy, beginning in approximately December 2018 through approximately March 2019, which successfully managed his symptoms. Shugall Decl. ¶ 13. Mr. Scott was in remission for the rest of the time that he was in pre-trial and criminal custody, for over five years. *Id.* That changed shortly after he entered ICE custody. Approximately four to five months into his time in ICE custody, Mr. Scott experienced a flare-up of his Crohn's disease. Shugall Decl. ¶ 20; Ex. D. After multiple inquiries by Mr. Scott and his counsel, an ICE deportation officer informed Mr. Scott's counsel that ICE was attempting to expedite a medical appointment for Mr. Scott with a specialist. Shugall Decl. ¶ 22. In the interim, medical staff at the Golden State Annex (GSA)—where Mr. Scott was initially detained—put Mr. Scott on Prednisone sporadically, while acknowledging that it is not the appropriate medication for Crohn's disease. *Id.* ¶ 23. The medical staff at GSA also administered Prednisone without a taper, which caused additional side effects for Mr. Scott. *Id.* GSA medical staff ordered a special diet on Mr. Scott's behalf, but he never received it. *Id.* One staff person at GSA informed Mr. Scott that there were too many people detained at GSA for the cafeteria to provide a special diet for one person. *Id.*

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Mr. Scott eventually saw a gastrointestinal specialist in early September 2024 and had a colonoscopy in mid-October 2024. *Id.* ¶ 24. The specialist recommended that Mr. Scott take Humera, an immunosuppressant. *Id.* However, GSA medical staff did not provide the medication to Mr. Scott. Instead, GSA medical staff told him on various occasions that while treatment for Crohn's disease involves immunosuppressant medication, it was not recommended that Mr. Scott him take an immunosuppressant while at GSA. *Id.* No reason was given for the recommendation.

On September 30, 2024, Mr. Scott, through counsel, filed a release request with ICE due to ICE's failure to provide him with necessary medical care. *Id.* ¶ 25. ICE denied Mr. Scott's request for release on October 18, 2024. *Id.* ICE subsequently transferred Mr. Scott from the GSA to NWIPC. *Id.* ¶ 26. At NWIPC, Mr. Scott directly and via counsel continued to seek medical treatment. *Id.* After repeated requests to ICE and NWIPC medical staff by counsel, in which counsel requested that Mr. Scott receive necessary medical treatment and dietary accommodation, NWIPC scheduled Mr. Scott to see a specialist. *Id.*

On approximately June 8, 2025, before Mr. Scott could see the specialist for another colonoscopy, ICE transferred Mr. Scott to the Anchorage Correctional Complex (ACC) in Anchorage, Alaska. *Id.* The transfer occurred for unknown reasons. *Id.* Three weeks later, on June 30, 2025, ICE again transferred Mr. Scott back to NWIPC. *Id.* Upon Mr. Scott's return to NWIPC, medical staff informed him that he had missed his appointment with the specialist. *Id.* Medical staff further informed Mr. Scott that they would re-schedule his appointment with a specialist. Mr. Scott subsequently had a colonoscopy on September 5, 2025. *Id.* As of the date of this filing, Mr. Scott still has not received specialized medication or dietary accommodation. Mr. Scott continues presently to battle the physical symptoms of his disease daily, including nausea, vomiting, diarrhea, and fatigue. *Id.* ¶ 27.

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ARGUMENT

I. Mr. Scott is no longer removable from the United States and the INA does not mandate his detention.

Mr. Scott's current detention without any review violates the immigration statute and the U.S. Constitution. ICE initially detained Mr. Scott on the basis that he was subject to removal from the United States, given his California state conviction under Penal Code § 211. Based on this conviction, ICE purported to subject Mr. Scott to detention under 8 U.S.C. § 1226(c). However, during Mr. Scott's removal proceedings, the Superior Court of California (Superior Court) vacated Mr. Scott's conviction under Penal Code § 211 because Mr. Scott's plea was not knowing or voluntary pursuant to Cal. Penal Code § 1473.7(a)(1) when he initially entered a guilty plea for the offense. *See Bent*, 115 F.4th at 941. Subsequently, Mr. Scott entered a plea to two offenses which do not trigger removability in his circumstances.

As a lawful permanent resident of the United States, the question of Mr. Scott's removability is governed by 8 U.S.C. § 1227. Mr. Scott is not presently seeking admission to the United States; thus, the grounds of inadmissibility, 8 U.S.C. § 1182, are inapplicable to him. For this reason, following the Superior Court's vacatur of the conviction that led ICE to initiate removal proceedings in Mr. Scott's case, Mr. Scott sought to remand his proceedings back to the IJ so that he can seek termination of his removal proceedings, given he is no longer removable from the United States. His motion remains pending.

For the same reason that Mr. Scott is no longer removable from the United States, Respondents cannot justify his present detention. Mr. Scott, via counsel, requested a bond hearing before the immigration court in July 2025. At the bond hearing, the IJ was required by agency precedent to consider whether ICE was substantially likely to prevail on its charge of removability under *Matter of Joseph*. *See* 22 I. & N. Dec. 799 at 805–06. The IJ failed to address

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this question and instead concluded that Mr. Scott's detention without review is governed by grounds of inadmissibility at 8 U.S.C. § 1182.

The IJ's finding directly contradicts the plain language of the governing detention statute. The Supreme Court has expressly explained that the language at 8 U.S.C. § 1226(c) means that for a person to be subject to that statute, DHS must have properly charged the conviction that forms the basis for detention. Specifically, the Court has said that the language "inadmissible by reason of" or "deportable by reason of" in § 1226(c) means that the conviction cited as the basis for mandatory detention must be "one of the offenses of removal in the noncitizen's removal proceeding." *Barton v. Barr*, 590 U.S. 222, 234 (2020) (emphasis omitted). As the Supreme Court explained in *Barton*, "the statutory text and context of those provisions support that limitation." *Id.* at 235. As explained above, here Mr. Scott is no longer subject to removal from the United States. By extension, Respondents cannot detain him, or detain him without review, as the conviction that ICE previously relied on to initiate removal proceedings and detain Mr. Scott has since been vacated and there are no other charges against Mr. Scott.

In sum, ICE has no longer has statutory authority to detain Mr. Scott under § 1226(c). His continued confinement without review violates the statute and the Constitution, and the Court should order his immediate release.

II. Mr. Scott's detention violates substantive due process

Mr. Scott's detention—now over eighteen months long—is excessively prolonged and punitive, amounting to a substantive due process violation. Substantive due process prohibits civil detention that is punitive in purpose or in effect, including civil detention that is excessively prolonged in relation to its purpose. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972). Put otherwise, "due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed"; otherwise, the

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commitment amounts to punishment. *Jones v. Blanas*, 393 F.3d 918, 931 (9th Cir. 2004) (quoting *Jackson*, 406 U.S. at 738).

The Ninth Circuit has held that civil detention violates substantive due process (1) when it is "expressly intended to punish," or (2) when "the challenged restrictions serve an alternative, non-punitive purpose but are nonetheless excessive in relation to the alternative purpose, . . . or are employed to achieve objectives that could be accomplished in so many alternative and less harsh methods." *Jones*, 393 F.3d at 932 (citation modified). These principles apply to civil immigration detention. *See, e.g.*, *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see also Demore v. Kim*, 538 U.S. 510, 522, 528 (2003); *Reid v. Donelan*, 17 F.4th 1, 8 (1st Cir. 2021). Because the purpose of immigration detention under § 1226(c) is to effectuate expeditious removal and safeguard the community, immigration detention that does not "bear some reasonable relation" to that purpose in nature or duration amounts to punishment and violates the Due Process Clause. *Jones*, 393 F.3d at 931.

In Mr. Scott's case, neither of these justifications are fulfilled, because he is not subject to removal from the United States. The Superior Court of California has vacated the sole conviction on which DHS relied upon to initiate removal proceedings against Mr. Scott. Once the BIA remands Mr. Scott's proceedings back to the immigration court, the only resolution of his case is termination of those proceedings. At present, there is no telling when the BIA will decide Mr. Scott's motion. The IJ nonetheless had authority to exercise jurisdiction over Mr. Scott's custody under *Matter of Joseph*, but instead, erroneously concluded that Mr. Scott's custody is governed by grounds of inadmissibility, which it is not.

Moreover, the conditions of Mr. Scott's detention are punitive. While immigration detention is civil in nature, Mr. Scott's confinement mirrors prison-like conditions. *See, e.g.*, *Reyes v. Wolf*, No. C20-0377-JLR-MAT, 2020 WL 6820903, at *3 (W.D. Wash. Aug. 7, 2020)

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(citation modified), *R&R adopted as modified*, No. C20-0377JLR, 2020 WL 6820822 (W.D. Wash. Nov. 20, 2020); *Parada Calderon v. Bostock*, No. 2:24-CV-01619-MJP-GJL, 2025 WL 1047578, at *4 (W.D. Wash. Jan. 17, 2025) (similar), *R&R adopted in part, rejected in part*, No. 2:24-CV-01619-MJP-GJL, 2025 WL 879718 (W.D. Wash. Mar. 21, 2025). Most urgently, Mr. Scott battles a chronic medical condition, Crohn's disease, which has gone untreated during the past year, when he began to experience flare-ups of his condition. Tellingly, Mr. Scott's Crohn's disease was adequately managed by medical staff while he was in pre-trial and criminal custody for over five years. He has now had a relapse while in ICE custody and lives with daily symptoms that include nausea, vomiting, diarrhea and fatigue. Detention facility staff have acknowledged they cannot provide the necessary medication and dietary accommodation. These circumstances undoubtedly render Mr. Scott's detention unconstitutionally punitive. *See King v. Cnty. of Los Angeles*, 885 F.3d 548, 556–57 (9th Cir. 2018) (holding that due process requires civil detention conditions not be same as or worse than criminal custody); *Jones*, 393 F.3d at 934 (same).

Given the substantive due process violation present in Mr. Scott's case, his immediate release is warranted. Courts in this circuit regularly issue writs of habeas corpus releasing immigrants whose ongoing custody violates the Constitution when the government cannot justify their civil detention, particularly where it has been prolonged, as in Mr. Scott's case. *See, e.g.*, *Doe v. Becerra,* 732 F. Supp. 3d 1071, 1090 (N.D. Cal. 2024); *Jimenez v. Wolf*, No. 19-cv-07996-NC, 2020 WL 1082648, at *4 (N.D. Cal. Mar. 6, 2020) (ordering petitioner's release on a motion to enforce a habeas order after an IJ denied bond at a prolonged detention hearing); *Ramos v. Sessions*, 293 F. Supp. 3d 1021, 1038 (N.D. Cal. 2018) (same); *Sales v. Johnson*, No. 16-cv-01745-EDL, 2017 WL 6855827, at *7 (N.D. Cal. Sept. 20, 2017) (same); *Judulang v. Chertoff*, 562 F. Supp. 2d 1119, 1127 (S.D. Cal. 2008) (same); *Mau v. Chertoff*, 562 F. Supp. 2d

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1107, 1118–19 (S.D. Cal. 2008) (same); *see also Ekeh v. Gonzales*, 197 F. App'x 637, 638 (9th Cir. 2006) (ordering supervised release pursuant to *Zadvydas*); *Nguyen v. Fasano*, 84 F. Supp. 2d 1099, 1113 (S.D. Cal. 2000) (issuing order to show cause why petitioner should not be released pursuant to *Zadvydas*).

Courts in sister circuits have done the same. *See, e.g.*, *Madrane v. Hogan*, 520 F. Supp. 2d 654, 667 (M.D. Pa. 2007) (finding "extended detention" under § 1226(c) violates due process and granting writ); *Bah v. Cangemi*, 489 F. Supp. 2d 905, 919 (D. Minn. 2007) (same); *Lawson v. Gerlinski*, 332 F. Supp. 2d. 735, 744–45 (M.D. Pa. 2004) (concluding that petitioner's prolonged immigration detention violated substantive due process and ordering release). Courts also issue writs of habeas corpus releasing detained noncitizens when conditions of confinement are excessive in relation to the person's flight risk or danger to the community. *See, e.g.*, *Doe v. Becerra*, 732 F. Supp. 3d 1071 at 1089-90; *Bent v. Barr*, 445 F. Supp. 3d 408, 414–15, 421 (N.D. Cal. 2020); *Doe v. Barr*, No. 20-cv-02141-LB, 2020 WL 1820667, at *8–10 (N.D. Cal. Apr. 12, 2020); *Ortuño v. Jennings*, No. 20-cv-02064-MMC, 2020 WL 1701724, at *3–5 (N.D. Cal. Apr. 8, 2020); *Doe v. Barr*, No. 20-cv-02263-RMI, 2020 WL 1984266, at *6–7 (N.D. Cal. Apr. 27, 2020).

In sum, neither the asserted statutory purposes nor the conditions of Mr. Scott's confinement bear a reasonable relation to lawful civil detention. The Court should thus grant the habeas petition and order his immediate release.

III. Alternatively, Mr. Scott's detention violates procedural due process.

In the alternative, Mr. Scott's continued, prolonged detention without review violates procedural due process. The length of his detention combined with the punitive conditions that Mr. Scott endures require review by a neutral arbiter. To guard against arbitrary detention and to guarantee the right to liberty, due process requires "adequate procedural protections" that ensure

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the government's asserted justification for a noncitizen's physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690.

Although the Supreme Court has held that "brief" detention during removal proceedings under § 1226(c) does not violate the Constitution, it did not disturb the longstanding principle that otherwise-acceptable civil detention is unconstitutionally punitive once it becomes prolonged. *Demore*, 538 U.S. at 513, 529. In *Demore*, the Supreme Court denied a facial challenge to detention under § 1226(c), which asserted that the statute was unconstitutional because it imposed mandatory detention without a custody hearing. However, the Supreme Court emphasized that such detention was typically "brief" in length and lasted "roughly a month and a half in the vast majority of cases . . . and about five months in the minority of cases in which the [non-citizen] chooses to appeal." *Id.* at 530.

Accordingly, courts continue to consider procedural due process challenges to prolonged immigration detention pursuant to § 1226(c). *See Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018) (registering "grave doubts that any statute that allows for arbitrary prolonged detention without any process is constitutional"); *German Santos v. Warden Pike Cty. Corr. Facility*, 965 F.3d 203, 210 (3d Cir. 2020) (holding that "§ 1226(c) is unconstitutional when applied to detain an alien unreasonably long without a bond hearing"). As a result, where the government detains a noncitizen for a prolonged period while the noncitizen pursues a substantial defense to removal, due process requires an individualized hearing before a neutral decisionmaker to determine whether detention remains reasonably related to its purpose. *Demore*, 538 U.S. at 532 (Kennedy, J., concurring) (stating that an "individualized determination as to [a noncitizen's] risk of flight and dangerousness" may be warranted "if the continued detention became unreasonable or unjustified"); *cf. Jackson*, 406 U.S. at 733 (detention beyond

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the "initial commitment" requires additional safeguards); *McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249–50 (1972) (noting that "lesser safeguards may be appropriate" for "short-term confinement"); *Hutto v. Finney*, 437 U.S. 678, 685-86 (1978) (observing, in Eighth Amendment context, that "the length of confinement cannot be ignored in deciding whether [a] confinement meets constitutional standards").

As the Ninth Circuit has explained in the pretrial detention context, "[i]t is undisputed that at some point, [civil] detention can 'become excessively prolonged, and therefore punitive,' resulting in a due process violation." *United States. v. Torres*, 995 F.3d 695, 708 (9th Cir. 2021) (quoting *United States v. Salerno*, 481 U.S. 739, 474 n.4 (1987)). These principles have "[o]verwhelmingly[] [led the] district courts that have considered the constitutionality of prolonged mandatory detention—including . . . other judges in this District[ ] [to] agree that prolonged mandatory detention pending removal proceedings, without a bond hearing, will—at some point—violate the right to due process." *Reyes*, 2020 WL 6820903, at *3; *see also Parada Calderon*, 2025 WL 1047578, at *4. Indeed, "[i]n the context of immigration detention, it is well-settled that due process requires adequate procedural protections to ensure that the government's asserted justification for physical confinement outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Hernandez v. Sessions*, 872 F.3d 976, 990–91 (9th Cir. 2017).

Courts assessing whether a detained noncitizen is entitled to a hearing as a matter of due process typically employ one of two tests: a multi-factor test or the test set out in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Courts in this District generally employ a multi-factor test. *See Djelassi v. ICE Field Off. Dir.*, 434 F. Supp. 3d 917, 929 (W.D. Wash. 2020); *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1106 (W.D. Wash 2019).

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Under the multi-factor test, courts consider "(1) the total length of detention to date; (2) the likely duration of future detention; (3) the conditions of detention; (4) delays in the removal proceedings caused by the detainee; (5) delays in the removal proceedings cause[d] by the government; and (6) the likelihood that the removal proceedings will result in a final order of removal." *Banda*, 385 F. Supp. 3d at 1106 (citation omitted). The length of detention is the "most important factor." *Id.* at 1118. The *Mathews* test requires balancing (1) the private interest threatened by governmental action; (2) the risk of erroneous deprivation of such interest and the probable value of additional procedural safeguards; and (3) the government interest. *Mathews*, 424 U.S. at 335. Mr. Scott merits a bond hearing under either test.

Mr. Scott's circumstances satisfy the multi-factor test. He has been detained for over eighteen months—well beyond six months. His appeal and motion to remand have been fully briefed before the Board since March 4, 2025—nearly six months. There is no telling when his appeals will be decided. As explained above, the conditions of detention he faces are abysmal, due to ICE's failure to provide adequate medical care and the symptoms he endures daily. Moreover, Mr. Scott is likely to prevail in his removal proceedings, given that he is a lawful permanent resident who is no longer removable.

Moreover, under the *Mathews* balancing test, the private interest threatened by governmental action weighs strongly in Mr. Scott's favor. *See* 424 U.S. at 335. Mr. Scott "has an overwhelming interest here—regardless of the length of his immigration detention—because any length of detention implicates the same fundamental rights." *Perera v. Jennings*, No. 21-cv-04136-BLF, 2021 WL 2400981, at *4 (N.D. Cal. June 11, 2021) (citation modified).

The risk of erroneous deprivation of liberty is high, as Mr. Scott has been detained for over eighteen months without a hearing before a neutral arbiter as to whether the government can justify detention under his individualized circumstances. *See Zadvydas*, 533 U.S. at 690 (holding

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prolonged detention permissible only when detained person poses risk of flight or danger to the community). Conversely, "the probable value of additional procedural safeguards—an individualized evaluation of the justification for his detention—is high, because Respondents have provided virtually no procedural safeguards at all." *Jimenez*, 2020 WL 510347, at *3 (granting habeas petition for person who had been detained for one year without a bond hearing).

Finally, Respondents' interest in continuing to detain Mr. Scott without providing any neutral review of whether detention is justified is weak. *See Mathews*, 424 U.S. at 335. The specific interest at stake here, where the detention statute does not provide any individualized review, is not the government's ability to continue to detain Mr. Scott, but rather the government's ability to continue to detain him for an excessive amount of time without any individualized review. *See Marroquin Ambriz*, 420 F. Supp. 3d 953, 964 (N.D. Cal. Oct. 28, 2019). The cost of providing an individualized inquiry is minimal. The government has repeatedly conceded this fact. *See Singh v. Barr*, No. 18-cv-2471-GPC-MSB, 2019 WL 4168901, at *12 (N.D. Cal. Aug. 30, 2019) ("The government has not offered any indication that a second bond hearing would have outside effects on its coffers."); *see also Marroquin Ambriz*, 420 F. Supp. 3d at 964; *Lopez Reyez v. Bonnar*, 362 F. Supp. 3d 762, 777 (N.D. Cal. 2019). In any event, it is "always in the public interest to prevent the violation of a party's constitutional rights." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Sammartano v. First Judicial Dist. Court*, 303 F.3d 959, 974 (9th Cir. 2002)); *see Doe v. Kelly*, 878 F.3d 710, 718 (9th Cir. 2017) (holding that the government "suffers no harm from an injunction that merely ends unconstitutional practices and/or ensures that constitutional standards are implemented").

Courts regularly afford noncitizens a bond hearing after detention periods similar to, or even shorter than, Mr. Scott's confinement. *See, e.g.*, *Banda*, 385 F. Supp. 3d at 1118 (noting that 17 months of detention was a "very long time" that "strongly favor[ed] granting a bond

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hearing); *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022) ("Petitioner has been in immigration detention . . . [for] approximately one year. District courts have found shorter lengths of detention pursuant to § 1226(c) without a bond hearing to be unreasonable."); *Gonzalez v. Bonnar*, No. 18-cv-05321-JSC, 2019 WL 330906, at *5 (N.D. Cal. Jan. 25, 2019) (detention of just over a year that would last several more months favored granting bond hearing); *Martinez v. Clark*, No. C18-1669-RAJ-MAT, 2019 WL 5968089, at *11 (W.D. Wash. May 23, 2019), *R&R adopted*, No. 18-CV-01669-RAJ, 2019 WL 5962685 (W.D. Wash. Nov. 13, 2019) (detention of thirteen months favored granting bond hearing); *Cabral v. Decker*, 331 F. Supp. 3d 255, 261 (S.D.N.Y. 2018) (same, for seven months); *Liban M.J. v. Sec'y of DHS*, 367 F. Supp. 3d 959, 963-64 (D. Minn. 2019) (same, for twelve months).

Further, because a custody hearing is warranted as a procedural safeguard against unreasonably prolonged detention in Mr. Scott's case, Respondents must bear the burden of justifying continued confinement by clear and convincing evidence. *See Singh v. Holder*, 638 F.3d 1196, 1205 (9th Cir. 2011); *see also Cooper v. Oklahoma*, 517 U.S. 348, 363 (1996) (holding that "due process places a heightened burden of proof on the State in civil proceedings in which the 'individual interests at stake . . . are both particularly important and more substantial than mere loss of money" (quoting *Santosky v. Kramer*, 455 U.S. 745, 756 (1982))); *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) (requiring clear and convincing evidence to justify civil commitment because "[f]reedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause").

As demonstrated above, Mr. Scott's statutory and substantive due process violations warrant his immediate release. *See supra* Sec. I–II. In the alternative, and at a minimum, the Court should declare that Mr. Scott's prolonged detention violates procedural due process and

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order Respondents to release Mr. Scott unless they provide a hearing before an IJ within seven days where ICE must justify his continued detention by clear and convincing evidence.

IV. Exhaustion of administrative remedies is not required.

The Court should reject any contention that Mr. Scott is required to await the BIA's adjudication of his custody appeal before bringing his claims before this Court. While a court may require exhaustion as a prudential matter for individual habeas claims, such exhaustion is not warranted here. In the Ninth Circuit, prudential exhaustion is appropriate only where:

> (1) agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision;
>
> (2) relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and
>
> (3) administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review.

Hernandez, 872 F.3d at 988 (quoting *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007)). Even where exhaustion might otherwise apply, exceptions exist where "administrative remedies are inadequate or not efficacious, . . . [or] irreparable injury will result . . . ." *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation omitted). Here, the *Puga* factors weigh squarely against requiring exhaustion, and even if they did not, exceptions to exhaustion would apply.

First, agency expertise is not needed to resolve the issues presented. Mr. Scott's detention claim turns on the scope of 8 U.S.C. § 1226(c) and whether mandatory detention is permissible when the predicate conviction has been vacated and a lawful permanent resident ceases to be deportable. That is a pure question of statutory interpretation and due process, which is the province of the courts. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385 (2024) ("When the meaning of a statute [is] at issue, the judicial role [is] to 'interpret the act of Congress, in order to ascertain the rights of the parties.'" (citation omitted)). Furthermore, the agency does not

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even have the authority to consider Mr. Scott's constitutional claims because such claims are beyond the authority of the agency to adjudicate. *See Morgan v. Gonzales*, 495 F.3d 1084, 1089 (9th Cir. 2007) ("The [BIA] has no power to grant relief on . . . substantive due process claims, and accordingly, we have never required petitioners to exhaust claims of this nature before the agency." (citations omitted)); *see also, e.g.*, *Phan v. Reno*, 56 F. Supp. 2d 1149, 1153 (W.D. Wash. 1996) (declining to impose exhaustion requirement because "[n]o administrative proceeding exists to consider" constitutional challenge to continued detention); *Doe v. Barr*, 2020 WL 1820667, at *8 ("[T]he petitioner's claim of entitlement to a bond hearing is based on the Fifth Amendment . . . and thus exceeds the jurisdiction of the immigration courts and the BIA.").

Second, excusing exhaustion would not encourage the deliberate bypass of administrative procedures. Mr. Scott has not sidestepped those processes—he has already pursued relief before the immigration court and BIA by requesting a custody determination under *Matter of Joseph*. Furthermore, his motion to remand proceedings to the IJ has been pending for over six months without resolution. The problem is not that he bypassed the administrative process, but that the process has proven incapable of timely resolving his claims while his liberty is at stake. This is precisely the type of case in which federal courts step in to prevent irreparable harm caused by delay. *See, e.g.*, *Rodriguez Vazquez*, 779 F. Supp. 3d 1239 at 1253–54.

Third, administrative review is not likely to provide a timely remedy and preclude the need for judicial review. With respect to Mr. Scott's substantive due process claims, the BIA cannot resolve them, as noted above. Although the BIA can review the statutory questions presented, its prolonged inaction demonstrates that administrative review will not timely correct the errors in Mr. Scott's case or obviate the need for judicial review. In these circumstances,

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judicial intervention is not only appropriate but necessary to safeguard Mr. Scott's constitutional rights.

Even if prudential exhaustion were otherwise warranted, for similar reasons as outlined above, the exceptions apply here. Critically, Mr. Scott faces irreparable harm from ongoing detention, and the delay in administrative review only compounds that harm. Both grounds independently warrant excusing exhaustion. *See Laing*, 370 F.3d at 1000.

Mr. Scott's unlawful detention constitutes "a loss of liberty that is . . . irreparable." *Moreno Galvez v. Cuccinelli*, 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020) (*Moreno II*), *aff'd in part, vacated in part on other grounds, remanded sub nom. Moreno Galvez v. Jaddou*, 52 F.4th 821 (9th Cir. 2022); *cf. Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013) (irreparable harm is met where "preliminary injunction is necessary to ensure that individuals . . . are not needlessly detained" because they are neither a danger nor a flight risk). This is particularly true here, where Mr. Scott's detention also violates the U.S. Constitution. Civil immigration detention violates due process outside of "certain special and narrow nonpunitive circumstances." *Rodriguez*, 909 F.3d at 257 (citation omitted).

Continued detention inflicts substantial irreparable harm on Mr. Scott for two additional reasons. First, as noted, Mr. Scott suffers from Crohn's disease, and ICE has failed to provide adequate medical treatment to manage his symptoms. While in pre-trial and then criminal custody, medical staff treated him adequately, and his disease was in remission for over five years. Approximately four to five months into his time in ICE custody, Mr. Scott experienced a flare-up of his medical condition. Since it flared up, Mr. Scott and his counsel have attempted to secure medical treatment, but to no avail. In fact, ICE-contracted staff at detention facilities have informed Mr. Scott that the medication and dietary accommodation he requires to manage his Crohn's disease are not possible in ICE detention. *Hernandez*, 872 F.3d at 995 (noting evidence

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cited by amicus "… of subpar medical and psychiatric care in ICE detention facilities," in finding plaintiffs had demonstrated irreparable harm). The result is that ICE has left Mr. Scott's Crohn's disease untreated, causing him extreme physical symptoms, such as nausea, vomiting, diarrhea, and fatigue. He experiences these symptoms daily.

Second, Mr. Scott's detention deprives him of the company of his family. Such "separation from family members" constitutes irreparable harm. *Leiva-Perez v. Holder*, 640 F.3d 962, 969–70 (9th Cir. 2011) (per curiam) (citation omitted); *see also, e.g.*, *Washington v. Trump*, 847 F.3d 1151, 1169 (9th Cir. 2017) (per curiam) (finding "separated families" to be a "substantial injur[y] and even irreparable harm[]"); *cf. Hernandez*, 872 F.3d at 996 (recognizing that "government-compelled [family] separation" causes family members "trauma" and "other burdens").

Finally, the severe harms are compounded by the well-documented delays in administrative review. EOIR data confirm that custody appeals regularly take over six months to resolve, *see Rodriguez Vazquez*, 779 F. Supp. 3d at 1253, and each day of delay compounds the irreparable harm: Mr. Scott remains detained even though the statutory and constitutional predicates for that detention have vanished, and he suffers daily deterioration of his health as ICE refuses to provide him with necessary medical care. Courts in this circuit have repeatedly waived exhaustion in similar circumstances, recognizing that prolonged detention during agency delay produces precisely the harm habeas review is designed to prevent. *See Rodriguez Vazquez*, 779 F. Supp. 3d at 1253–54; *Cortez v. Sessions*, 318 F. Supp. 3d 1134, 1139 (N.D. Cal. 2018).

For all these reasons, prudential exhaustion does not bar this Court from reaching the merits of Mr. Scott's claims.

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CONCLUSION

For the foregoing reasons, Mr. Scott respectfully requests that the Court promptly issue an order to show cause requiring Respondents to justify his detention and an expedited briefing schedule. Upon expedited consideration, the Court should grant Mr. Scott's habeas petition and order Respondents to immediately release him from ICE custody or, in the alternative, to provide him with an individualized bond hearing where the government bears the burden of justifying his continued detention with clear and convincing evidence.

Respectfully submitted this 19th of September, 2025.

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* *Application for admission pro hac vice forthcoming*

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