
3:26-cv-00057-TWR-MMP Martinez Flores v. Larose et al
Todd W. Robinson, presiding
Michelle M. Pettit, referral
Date filed: 01/05/2026
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History

Doc. No.	Dates	Description
<u>1</u>	<i>Filed & Entered:</i> 01/05/2026	 Petition for Writ of Habeas Corpus
<u>2</u>	<i>Filed & Entered:</i> 01/09/2026	 Order to Show Cause
<u>3</u>	<i>Filed & Entered:</i> 01/12/2026	 Summons Returned Executed
<u>4</u>	<i>Filed & Entered:</i> 01/12/2026	 Notice of Appearance
<u>5</u>	<i>Filed & Entered:</i> 01/15/2026	 Return to Petition
<u>6</u>	<i>Filed & Entered:</i> 01/15/2026	 Order

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JURISDICTION

2. This action arises under the Constitution of the United States; the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101, *et seq*; and the Administrative Procedures Act (“APA”), 5 U.S.C. § 500, *et seq*.

3. This court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus; 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1651 (All Writs Act); 5 U.S.C. § 701 *et seq*. (APA); and 28 U.S.C. §§ 2201-2202 (Declaratory Judgment Act).

4. The court may grant relief under the habeas corpus statutes, the Declaratory Judgment Act, and the All-Writs Act, 28 U.S.C. § 1651.

VENUE

5. Venue is proper because Petitioner is detained at the Otay Mesa Detention Facility, in San Diego, California, which is within the jurisdiction of this District.

6. Venue is also proper in this judicial district pursuant to 28 USC §1391(e) because at least one federal respondent is in this District; and a substantial part of the events or omissions giving rise to the claims in this action took place in this District. No real property is involved.

REQUIREMENTS OF 28 U.S.C. § 2243

7. The Court must grant the habeas corpus petition or issue an order to show cause (OSC) to the respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id*.

8. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

PARTIES

9. Petitioner VIRGINIA MARTINEZ FLORES (“Petitioner”) is a 48-year-old citizen of Mexico. She is detained by the Respondents at the Otay Mesa Detention Center.

1 applies to all noncitizens, including both removable and inadmissible noncitizens. *See id.* at 721
2 (Kennedy, J., dissenting) (“[B]oth removable and inadmissible [noncitizens] are entitled to be free
3 from detention that is arbitrary or capricious”).

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

10 17. Due process requires that the government provide bond hearings to noncitizens
11 facing prolonged detention. “The Due Process Clause foresees eligibility for bail as part of due
12 process” because “[b]ail is basic to our system of law.” *Jennings*, 138 S. Ct. at 862 (Breyer, J.,
13 dissenting) (internal quotation marks omitted). While the Supreme Court upheld the mandatory
14 detention of a noncitizen under Section 1226(c) in *Demore*, it did so based on the petitioner’s
15 concession of deportability and the Court’s understanding at the time that such detentions are
16 typically “brief.” *Demore*, 538 U.S. at 522 n.6, 528. Where a noncitizen has been detained for a
17 prolonged period or is pursuing a substantial defense to removal or claim to relief, due process
18 requires an individualized determination that such a significant deprivation of liberty is warranted.
19 *Id.* at 532 (Kennedy, J., concurring) (“[I]ndividualized determination as to his risk of flight and
20 dangerousness” may be warranted “if the continued detention became unreasonable or
21 unjustified”); *see also Jackson v. Indiana*, 406 U.S. 715, 733 (1972) (holding that detention beyond
22 the “initial commitment” requires additional safeguards); *McNeil v. Dir., Patuxent Inst.*, 407 U.S.
23 245, 249-50 (1972) (holding that “lesser safeguards may be appropriate” for “short term
24 confinement”); *Hutto v. Finney*, 437 U.S. 678, 685-86 (1978) (holding that, in the Eighth
25 Amendment context, “the length of confinement cannot be ignored in deciding whether [a]
26 confinement meets constitutional standards”); *Reid v. Donelan*, 17 F.4th 1, 7 (1st Cir. 2021)
27 (holding that “the Due Process Clause imposes some form of reasonableness limitation upon the
28 duration of detention” under section 1226(c)) (internal quotation marks omitted).

1 **A. Detention That Exceeds Six Months**
2 **Without A Bond Hearing Is Unconstitutional.**

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

14 19. The recognition that six months is a substantial period of confinement—and is the
15 time after which additional process is required to support continued incarceration—is deeply rooted
16 in our legal tradition. With few exceptions, “in the late 18th century in America crimes triable
17 without a jury were for the most part punishable by no more than a six-month prison term.”
18 *Duncan v. Louisiana*, 391 U.S. 145, 161 & n.34 (1968). Consistent with this tradition, the Supreme
19 Court has found six months to be the limit of confinement for a criminal offense that a federal court
20 may impose without the protection afforded by jury trial. *Cheff v. Schnackenberg*, 384 U.S. 373,
21 380 (1966) (plurality opinion). The Court has also looked to six months as a benchmark in other
22 contexts involving civil detention. *See McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249, 250-52
23 (1972) (recognizing six months as an outer limit for confinement without individualized inquiry for
24 civil commitment). The Court has likewise recognized the need for bright line constitutional rules
25 in other areas of law. *See Maryland v. Shatzer*, 559 U.S. 98, 110 (2010) (holding that 14 days must
26 elapse following invocation of *Miranda* rights before re interrogation is permitted); *Cnty. of*
27 *Riverside v. McLaughlin*, 500 U.S. 44, 55-56 (1991) (holding that a probable cause hearing must
28 take place within 48 hours of warrantless arrest).

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

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

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

13 22. Petitioner faces severe hardships while detained by ICE. Petitioner is held in a
14 locked down facility, with limited freedom of movement and access to Petitioner’s family or
15 support network: “[T]he circumstances of their detention are similar, so far as we can tell, to those
16 in many prisons and jails.” *Jennings*, 138 S. Ct. at 861 (Breyer, J., dissenting); *accord Chavez–*
17 *Alvarez v. Warden York Cnty. Prison*, 783 F.3d 469, 478 (3d Cir. 2015); *Ngo v. INS*, 192 F.3d 390,
18 397-98 (3d Cir. 1999); *Sopo v. U.S. Att’y Gen.*, 825 F.3d 1199, 1218, 1221 (11th Cir. 2016). “And
19 in some cases the conditions of their confinement are inappropriately poor” including, for example,
20 “invasive procedures, substandard care, and mistreatment, *e.g.*, indiscriminate strip searches, long
21 waits for medical care and hygiene products, and, in the case of one detainee, a multiday lock down
22 for sharing a cup of coffee with another detainee.” *Jennings*, 138 S. Ct. at 861 (Breyer, J.,
23 dissenting) (citing Press Release, Off. of Inspector Gen., Dept. of Homeland Sec., *DHS OIG*
24 *Inspection Cites Concerns With Detainee Treatment and Care at ICE Detention Facilities* (Dec.
25 14, 2017)); *see also* Tom Dreisbach, *Government's own experts found 'barbaric' and 'negligent'*
26 *conditions in ICE detention*, NPR (Aug. 16, 2023, 5:01 AM) (reporting on the “‘negligent’ medical
27 care (including mental health care), ‘unsafe and filthy’ conditions, racist abuse of detainees,
28 inappropriate pepper-spraying of mentally ill detainees and other problems that, in some cases,

1 contributed to detainee deaths” contained in inspection reports prepared by experts from the
2 Department of Homeland Security’s Office for Civil Rights and Civil Liberties after examining
3 detention facilities between 2017 and 2019).

4 23. The *Mathews* test for procedural due process claims balances: (1) the private interest
5 threatened by governmental action; (2) the risk of erroneous deprivation of such interest and the
6 value of additional or substitute safeguards; and (3) the government interest. *Mathews v. Eldridge*,
7 424 U.S. 319, 335 (1976); *see also Sho v. Current or Acting Field Off. Dir.*, No. 1:21- CV-01812
8 TLN AC, 2023 WL 4014649, at *3 (E.D. Cal. June 15, 2023), *report and recommendation*
9 *adopted*, No. 1:21-CV-1812-TLN-AC, 2023 WL 4109421 (E.D. Cal. June 21, 2023) (applying
10 *Mathews* factors to a habeas petitioner’s due process claims and collecting cases doing the same).
11 Here, each factor weighs in Petitioner’s favor, requiring this Court to promptly hold a hearing to
12 evaluate whether the government can justify their ongoing detention.

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

19 25. Second, Petitioner will suffer the erroneous risk of deprivation of her liberty without
20 an individualized evidentiary hearing. The risk of erroneous deprivation of her liberty is high, as
21 they have been detained since June 11, 2025 without any additional evaluation of whether the
22 government can justify detention under their individualized circumstances. “[T]he risk of an
23 erroneous deprivation of liberty in the absence of a hearing before a neutral decisionmaker is
24 substantial.” *Diouf*, 634 F.3d at 1092. Conversely, “the probable value of additional procedural
25 safeguards— an individualized evaluation of the justification for his detention—is high, because
26 Respondents have provided virtually no procedural safeguards at all.” *Jimenez v. Wolf*, No. 19-cv-
27 07996-NC, 2020 WL 510347, *3 (N.D. Cal. Jan. 30, 2020) (granting habeas petition for person
28 who had been detained for one year without a bond hearing).

1 26. Third, the government's interest is very low in continuing to detain Petitioner
2 without providing any neutral review. *See Mathews*, 424 U.S. at 335. The specific interest at stake
3 here is not the government's ability to continue to detain Petitioner, but rather the government's
4 ability to continue to detain them for months on end without any individualized review. *See*
5 *Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 964 (N.D. Cal. 2019); *Henriquez v. Garland*, No.
6 5:22-CV-00869-EJD, 2022 WL 2132919, at *5 (N.D. Cal. June 14, 2022). The cost of providing an
7 individualized inquiry is minimal. *See Henriquez*, 2022 WL 2132919, at *5. The government has
8 repeatedly conceded this fact. *See Lopez Reyes v. Bonnar*, 362 F. Supp. 3d 762, 777 (N.D. Cal.
9 2019); *Singh v. Barr*, 400 F. Supp. 3d 1005, 1021 (S.D. Cal. 2019); *Marroquin Ambriz*, 420 F.
10 Supp. 3d at 964.

11 27. In sum, the *Mathews* factors establish that Petitioner is entitled to an evidentiary
12 hearing before a neutral adjudicator. Unsurprisingly, courts applying these standards in this Circuit
13 have repeatedly held that prolonged detention without a hearing before a neutral adjudicator
14 violates procedural due process. *See, e.g., Romero Romero v. Wolf*, No. 20-CV 08031-TSH, 2021
15 WL 254435, at *2, *5 (N.D. Cal. Jan. 26, 2021) (holding that the petitioner's detention of just over
16 one year without a custody hearing was "not compatible with due process" and granting habeas);
17 *Jimenez*, 2020 WL 510347, at *1, *2, *4 (holding that the petitioner's detention of just over one
18 year without a custody hearing violated his due process rights and granting habeas); *Gonzalez v.*
19 *Bonnar*, No. 18-CV-05321-JSC, 2019 WL 330906, at *1, *5 (N.D. Cal. Jan. 25, 2019) (holding
20 that the petitioner's detention for just over one year without a custody hearing violates his due
21 process rights and granting habeas); *see also Singh v. Garland*, No. 1:23-cv-01043-EPG-HC, 2023
22 WL 5836048, at *6 (E.D. Cal. 2023); *Sho v. Current or Acting Field Office Director*, No. 1:21-cv-
23 01812-TLN-AC, 2023 WL 4014649 (E.D. Cal. 2023). This Court should so hold as well.

24 28. *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022), does not disturb this
25 result. In *Rodriguez Diaz*, the Ninth Circuit applied the *Mathews* test to hold that the detention of a
26 noncitizen detained under a different detention statute, 8 U.S.C. § 1226(a), did not violate
27 procedural due process. 53 F.4th at 1195. Unlike Sections 1225(b) and 1226(c), § 1226(a) mandates
28 that detained individuals receive an individualized bond hearing at the outset of detention and

1 provides for further bond hearings upon a material change in circumstances. *See* 8 C.F.R. §
2 1003.19(e). The panel’s decision in *Rodriguez Diaz* was predicated on the immediate and ongoing
3 availability of this administrative process under § 1226(a). 53 F.4th at 1202 (“Section 1226(a) and
4 its implementing regulations provide extensive procedural protections that are unavailable under
5 other detention provisions . . .”). Unlike the petitioner in *Rodriguez Diaz*, Petitioner has no
6 statutory access to individualized review of her detention.

7 29. Alternatively, courts that apply a reasonableness test have considered four non
8 exhaustive factors in determining whether detention is reasonable. *German Santos v. Warden Pike*
9 *Cnty. Corr. Facility*, 965 F.3d 203, 210-22 (3d Cir. 2020). The reasonableness inquiry is “highly
10 fact-specific.” *Id.* at 210. “The most important factor is the duration of detention.” *Id.* at 211; *see*
11 *also Gonzalez v. Bonnar*, No. 18-CV-05321-JSC, 2019 WL 330906, at *1, *5 (N.D. Cal. Jan. 25,
12 2019) (concluding that the petitioner’s detention for just over one year without a custody hearing
13 weighed strongly in favor of finding detention unreasonable and violated his due process rights and
14 granting habeas). Duration is evaluated along with “all the other circumstances,” including (1)
15 whether detention is likely to continue, (2) reasons for the delay, and (3) whether the conditions of
16 confinement are meaningfully different from criminal punishment. *Id.* at 211.

17 30. As noted, Petitioner has been detained for a substantial length of time, *supra* ¶ 25
18 and Petitioner’s detention is likely to continue as Petitioner asserts her right to seek immigration
19 relief, *supra* ¶ 19. Noncitizens should not be punished for pursuing “legitimate proceedings” to
20 seek relief. *See Masood v. Barr*, No. 19-CV-07623-JD, 2020 WL 95633, at *3 (N.D. Cal. Jan. 8,
21 2020) (“[I]t ill suits the United States to suggest that [Petitioner] could shorten his detention by
22 giving up these rights and abandoning his asylum application.”). Thus, courts should not count a
23 continuance against the noncitizen when they obtained it in good faith to prepare their removal
24 case, including efforts to obtain counsel. *See Hernandez Gomez*, 2023 WL 2802230, at *4 (“The
25 duration and frequency of these requests [for continuances] do not diminish his significant liberty
26 interest in his release or his irreparable injury of continued detention without a bond hearing.”).
27 Moreover, Petitioner’s confinement and experiences at a facility operated by a private, for-profit
28 prison contractor, demonstrate that their conditions of confinement are not meaningfully different

1 from those of criminal punishment.

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

4 31. At a bond hearing, due process requires certain minimum protections to ensure that a
5 noncitizen's detention is warranted: the government must bear the burden of proof by clear and
6 convincing evidence to justify continued detention, taking into consideration available alternatives
7 to detention; and, if the government cannot meet its burden, the noncitizen's ability to pay a bond
8 must be considered in determining the appropriate conditions of release.

9 32. To justify prolonged immigration detention, the government must bear the burden of
10 proof by clear and convincing evidence that the noncitizen is a danger or flight risk. *See Singh v.*
11 *Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011); *Aleman Gonzalez v. Barr*, 955 F.3d 762, 781 (9th Cir.
12 2020), *rev'd on other grounds by Garland v. Aleman Gonzalez*, 142 S. Ct. 2057, 213 L. Ed. 2d 102
13 (2022) (“*Jennings’s* rejection of layering [the clear and convincing burden of proof standard] onto
14 § 1226(a) as a matter of statutory construction cannot . . . undercut our constitutional due process
15 holding in *Singh.*”); *Sho*, 2023 WL 4014649, at *5 (applying *Singh* and holding that the
16 government shall bear the burden in a constitutionally required bond hearing to remedy detention
17 under a different statutory provision); *Singh*, 2023 WL 5836048, at *9 (same); *Doe v. Garland*, No.
18 3:22-CV-03759-JD, 2023 WL 1934509, at *2 (N.D. Cal. Jan. 10, 2023) (same); *Pham v. Becerra*,
19 No. 23-CV-01288-CRB, 2023 WL 2744397, at *7 (N.D. Cal. Mar. 31, 2023) (same); *Hernandez*
20 *Gomez v. Becerra*, No. 23-CV 01330-WHO, 2023 WL 2802230, at *4 (N.D. Cal. Apr. 4, 2023)
21 (same); *Martinez Leiva v. Becerra*, No. 23-CV-02027-CRB, 2023 WL 3688097, at *9 (N.D. Cal.
22 May 26, 2023); *I.E.S. v. Becerra*, No. 23-CV-03783-BLF, 2023 WL 6317617, at *10 (N.D. Cal.
23 Sept. 27, 2023) (same); *Singh Grewal v. Becerra*, No. 23-CV-03621-JCS, 2023 WL 6519272, at *8
24 (N.D. Cal. Oct. 4, 2023) (same); *Gomez v. Becerra*, No. 23-CV-03724-JCS, 2023 WL 6232236, at
25 *9 (N.D. Cal. Sept. 25, 2023) (same); *Henriquez v. Garland*, No. 23-CV-01025-AMO, 2023 WL
26 6226374, at *4 (N.D. Cal. Sept. 25, 2023) (same); *Rodriguez Picazo v. Garland*, No. 23-CV-
27 02529-AMO, 2023 WL 5352897, at *7 (N.D. Cal. Aug. 21, 2023) (same).

28 33. Where the Supreme Court has permitted civil detention in other contexts, it has

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

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

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

24 35. Due process also requires consideration of alternatives to detention. The primary
25 purpose of immigration detention is to ensure a noncitizen’s appearance during civil removal
26 proceedings. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related to this purpose if there
27 are alternative conditions of release that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S.
28 520, 538–39 (1979) (civil pretrial detention may be unconstitutionally punitive if it is excessive in

1 relation to its legitimate purpose). ICE’s alternatives to detention program—the Intensive
2 Supervision Appearance Program—has achieved extraordinary success in ensuring appearance at
3 removal proceedings, reaching compliance rates close to 100 percent. *Hernandez v. Sessions*, 872
4 F.3d 976, 991 (9th Cir. 2017) (observing that ISAP “resulted in a 99% attendance rate at all EOIR
5 hearings and a 95% attendance rate at final hearings”). Thus, alternatives to detention must be
6 considered in determining whether prolonged incarceration is warranted.

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

19 **FACTUAL ALLEGATIONS**

20 37. Petitioner Virginia Martinez Flores is a 48-year-old citizen of Mexico. She has lived
21 in the United States since 1998. Virginia is married. She has two children: (1) [REDACTED] age 24; and (2)
22 [REDACTED] age 18. Both children are United States citizens. She has three siblings who live in Orange
23 County. Virginia was self-employed at the swap meet. She has a minor criminal record, consisting
24 of a March 2025 citation for receiving stolen property. The Los Angeles County District Attorney
25 later filed a criminal complaint charging petitioner with possession of and receiving stolen property
26 [REDACTED]

27 38. Around May 22, 2025, the DHS detained petitioner and sent her to the Otay Mesa
28 Detention Center, a detention facility owned and operated by CoreCivic, a private, for-profit

1 company. The DHS started a removal proceeding by filing a Notice to Appear at the Otay Mesa
2 Immigration Court. Petitioner filed a motion for custody redetermination. On June 11, 2025, the
3 immigration judge denied the motion for bond, concluding that petitioner was subject to mandatory
4 detention under the Laken Riley Act. Petitioner filed an appeal to the Board of Immigration
5 Appeals. On December 19, 2025, the BIA denied the bond appeal.

6 39. In the removal case, the immigration judge found petitioner removable as charged.
7 As relief from removal, Virginia applied for 240A(b)(1) cancellation of removal. On August 25,
8 2025, the immigration judge denied the cancellation application. Virginia appealed the decision to
9 the BIA. The BIA appeal is pending.

10 40. On December 12, 2025, petitioner filed a request for a prolonged detention bond
11 redetermination hearing with the Otay Mesa Immigration Court. On December 16, 2025, the
12 immigration judge denied the request for a hearing, noting that the case of *Rodriguez v. Robbins*,
13 804 F.3d 1060 (9th Cir. 2015) had been overruled by the Supreme Court in the case of *Jennings v.*
14 *Rodriguez*, 138 S.Ct. 830 (2018).

15 **CAUSES OF ACTION**

16 **COUNT 1**

17 (Violation of the Due Process Clause)

18 41. Petitioner incorporates by reference the allegations set forth in paragraphs 1 to 40.

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

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

25 44. For these reasons, Petitioner’s ongoing prolonged detention without a hearing
26 violates due process.

27 **PRAYER FOR RELIEF**

28 WHEREFORE, Petitioner respectfully requests this Court to grant the following:

1 (1) Assume jurisdiction over this matter;
2 (2) Issue a Writ of Habeas Corpus, hold a hearing before this Court if warranted,
3 determine that Petitioner’s detention is not justified because the government has not established by
4 clear and convincing evidence that Petitioner presents a risk of flight or danger in light of available
5 alternatives to detention, and order Petitioner’s release (with appropriate conditions of supervision
6 if necessary), taking into account Petitioner’s ability to pay a bond;

7 (3) In the alternative, issue a Writ of Habeas Corpus and order Petitioner’s release
8 within 30 days unless Respondents schedule a hearing before an immigration judge where: (1) to
9 continue detention, the government must establish by clear and convincing evidence that Petitioner
10 presents a risk of flight or danger, even after consideration of alternatives to detention that could
11 mitigate any risk that Petitioner’s release would present; and (2) if the government cannot meet its
12 burden, the immigration judge order Petitioner’s release on appropriate conditions of supervision,
13 taking into account Petitioner’s ability to pay a bond; 4) Issue a declaration that Petitioner’s ongoing
14 prolonged detention violates the Due Process Clause of the Fifth Amendment;

15 (5) Award Petitioner costs and reasonable attorneys’ fees in this action as provided for
16 by the Equal Access to Justice Act, 28 U.S.C. § 2412; and

17 (6) Grant such further relief as the Court deems just and proper.

18 DATED: 5 January 2026

19 Respectfully submitted,

20 /s/ William Baker

21 _____
22 William Baker (157 906)
23 MORENO & ASSOCIATES
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25 Chula Vista, California 91913
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28 Attorney for petitioner

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VERIFICATION

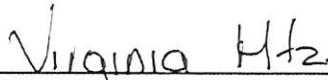
DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury under the laws of the United States that I am the petitioner; I have read the petition or had it read to me in a language I understand, and the information in the petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

VERIFICACIÓN

DECLARACIÓN BAJO PENA DE PERJURIO

Declaro bajo pena de perjurio según las leyes de los Estados Unidos que soy el peticionario; He leído la petición o me la han leído en un idioma que entiendo, y la información de la petición es verdadera y correcta. Entiendo que una declaración falsa de un hecho material puede servir como base para el enjuiciamiento por perjurio.



Virginia Martinez Flores
Petitioner/Peticionario