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UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

\_\_\_\_\_  
Junior - Noel, Vasquez - Calix  
\_\_\_\_\_  
[Full Name / Nombre Completo]

(A# )

Petitioner,

v.

Warden of Imperial Regional Detention Facility,  
Current or Acting Field Office Director, San  
Diego Field Office, United States  
Immigration and Customs Enforcement;  
Current or Acting Director, United States  
Immigration and Customs Enforcement;  
Current or Acting Secretary, United States  
Department of Homeland Security; and  
Current or Acting United States Attorney  
General,

Respondents.

Case No. '26CV2046 BJC AHG

Petition for Writ of Habeas Corpus

**PETITION FOR WRIT OF HABEAS CORPUS  
PURSUANT TO 28 U.S.C. § 2241**

Petitioner respectfully petitions this Honorable Court for a writ of habeas corpus to  
remedy Petitioner's unlawful detention by Respondents, as follows:

1 INTRODUCTION

2 1. Petitioner<sup>1</sup> is currently detained by Immigration and Customs Enforcement  
3 (“ICE”) at the Imperial Regional Detention Facility [*escriba el nombre del centro de detención*  
4 *donde está detenido*] detention center pending removal proceedings.

5 2. Petitioner has been detained in immigration custody for over 32  
6 [*escriba el número de meses que ha estado detenido*] months even though no neutral  
7 decisionmaker—whether a federal judge or immigration judge (“IJ”)—has conducted a hearing  
8 to determine whether this lengthy incarceration is warranted based on danger or flight risk.

9 3. Petitioner’s prolonged detention without a hearing on danger and flight risk  
10 violates the Due Process Clause of the Fifth Amendment.

11 4. Petitioner therefore respectfully requests that this Court issue a writ of habeas  
12 corpus, determine that Petitioner’s detention is not justified because the government has not  
13 established by clear and convincing evidence that Petitioner presents a risk of flight or danger in  
14 light of available alternatives to detention, and order Petitioner’s release, with appropriate  
15 conditions of supervision if necessary, taking into account Petitioner’s ability to pay a bond.

16 5. Alternatively, Petitioner requests that the Court issue a writ of habeas corpus and  
17 order Petitioner’s release within 30 days unless Respondents schedule a hearing before an IJ  
18 where: (1) to continue detention, the government must establish by clear and convincing  
19 evidence that Petitioner presents a risk of flight or danger, even after consideration of alternatives  
20 to detention that could mitigate any risk that Petitioner’s release would present; and (2) if the  
21 government cannot meet its burden, the IJ shall order Petitioner’s release on appropriate  
22 conditions of supervision, taking into account Petitioner’s ability to pay a bond.

23  
24 \_\_\_\_\_  
25 <sup>1</sup> Petitioner respectfully requests that the Court use his initials, rather than his full last name, in  
26 any opinion in his case, as suggested by the Committee on Court Administration and Case  
27 Management of the Judicial Conference of the United States. *See* Memorandum Re: Privacy  
28 Concern Regarding Social Security & Immigration Opinions (May 1, 2018), *available at*  
[https://www.uscourts.gov/sites/default/files/18-cv-1-suggestion\\_cacm\\_0.pdf](https://www.uscourts.gov/sites/default/files/18-cv-1-suggestion_cacm_0.pdf); *see also* *Jorge M.F.*  
*v. Jennings*, 534 F. Supp. 3d 1050 n.1 (N.D. Cal. Apr. 14, 2021).

1 JURISDICTION

2 6. Petitioner is detained in the custody of Respondents at Imperial Regional detention Facility  
3 [*escriba el nombre del centro de detención donde está detenido*] detention center.

4 7. This action arises under the Due Process Clause of the Fifth Amendment of the  
5 U.S. Constitution. Jurisdiction is proper under 28 U.S.C. §§ 1331 (federal question), 2241  
6 (habeas corpus); U.S. Const. art. I, § 2; (Suspension Clause); and 5 U.S.C. § 702 (Administrative  
7 Procedure Act. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et*  
8 *seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C.  
9 § 1651.

10 8. Congress has preserved judicial review of challenges to prolonged immigration  
11 detention. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 839-841 (2018) (holding that 8 U.S.C.  
12 §§ 1226(e), 1252(b)(9) do not bar review of challenges to prolonged immigration detention); *see*  
13 *also id.* at 876 (Breyer, J., dissenting). (“8 U.S.C. § 1252(b)(9) . . . by its terms applies only with  
14 respect to review of an order of removal”) (internal quotation marks and brackets omitted).

15 VENUE

16 9. Venue is proper in this District under 28 U.S.C. § 1391 because at least one  
17 Respondent is in this District and because Petitioner is presently detained under the authority of  
18 the Director of the San Diego ICE Field Office, a Respondent in this action.

19 10. Imperial Regional Detention Facility [*escriba el nombre del centro de detención donde*  
20 *está detenido*] detention center is operated by a private contractor and controlled by the San  
21 Diego Field Office of ICE Enforcement and Removal Operations (“ERO”). The San  
22 Diego Field Office of ICE ERO is responsible for carrying out ICE’s detention operations at  
23 this detention center and for adjudicating requests for release from those detained there.

24 11. Respondent Acting or Current Director of the San Diego ICE Field Office  
25 resides in this district for venue purposes because their official duties are performed in this  
26 district. *See Doe v. Becerra*, No. 5:23-cv-04767-PCP, 2023 WL 8307557, at \*3–6 (N.D. Cal.  
27  
28

1 Dec. 1, 2023) (San Diego ICE Field Office Director is properly-named respondent in habeas  
 2 because they are “a local official who is both ‘readily identifiable’ and exercises ‘immediate  
 3 control’ over [petitioner’s] detention”); *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1185 (N.D.  
 4 Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (“Instead  
 5 of naming the individual in charge of the contract facility—who may be a county official or an  
 6 employee of a private nonprofit organization—a petitioner held in federal detention in a non-  
 7 federal facility pursuant to a contract should sue the federal official most directly responsible for  
 8 overseeing that contract facility when seeking a habeas writ.”); *Thongvilay v. ICE*, No. 1:23-cv-  
 9 01605-CDB (HC) (Nov. 16, 2023) (returning transferred pro se habeas petition from E.D. Cal. to  
 10 N.D. Cal. because in the immigration detention context, habeas jurisdiction is proper in the  
 11 Northern District); *Singh Grewal v. Becerra*, No. 23-CV-03621-JCS, 2023 WL 6519272, at \*3  
 12 (N.D. Cal. Oct. 4, 2023) (“The undersigned agrees with *all of the other judges in this District*  
 13 *who have addressed the question* and finds that the director of the San Diego Field Office is a  
 14 proper respondent and therefore that there is jurisdiction in this District even though Petitioner is  
 15 detained in the Southern District” (emphasis added)); *id.* at \*4 (collecting cases).<sup>2</sup>

#### 18 REQUIREMENTS OF 28 U.S.C. § 2243

19  
 20 12. The Court must grant the petition for writ of habeas corpus or issue an order to

21  
 22 <sup>2</sup> See also *I.E.S. v. Becerra*, No. 23-CV-03783-BLF, 2023 WL 6317617, at \*5 (N.D. Cal. Sept.  
 23 27, 2023) (holding that San Francisco ICE Field Office Director is proper habeas respondent);  
 24 *Gomez v. Becerra*, No. 23-CV-03724-JCS, 2023 WL 6232236, at \*4 (N.D. Cal. Sept. 25, 2023)  
 25 (same); *id.* at \*4 n.2 (noting that “[a]t least fourteen judges in this district” have concluded the  
 26 same, and not one has held otherwise); *Martinez Leiva v. Becerra*, No. 23-CV-02027-CRB, 2023  
 27 WL 3688097, at \*4 (N.D. Cal. May 26, 2023) (same); *Hernandez Gomez v. Becerra*, No. 23-CV-  
 28 01330-WHO, 2023 WL 2802230, at \*3 (N.D. Cal. Apr. 4, 2023) (same); *Pham v. Becerra*, No.  
 23-CV-01288-CRB, 2023 WL 2744397, at \*4 (N.D. Cal. Mar. 31, 2023) (same); *Salesh P. v.*  
*Kaiser*, No. 22-CV-03018-DMR, 2022 WL 17082375, at \*5 (N.D. Cal. Nov. 18, 2022) (same);  
*Hilario Pankim v. Barr*, No. 20-CV-02941-JSC, 2020 WL 2542022, at \*4 (N.D. Cal. May 19,  
 2020) (same).

1 show cause ("OSC") to Respondents "forthwith," unless Petitioner is not entitled to relief. 28  
2 U.S.C. § 2243. If the Court issues an OSC, it must require Respondents to file a return "within  
3 *three days* unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*  
4 (emphasis added).  
5

6 13. Courts have long recognized the significance of the habeas statute in protecting  
7 individuals from unlawful detention. The Great Writ affords "a *swift and imperative remedy* in  
8 all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis  
9 added); *see also Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (explaining that habeas statute  
10 requires expeditious determination of petitions).

11 PARTIES

12 14. Petitioner is a noncitizen currently detained by Respondents pending ongoing  
13 removal proceedings.

14 15. Respondent Secretary of the U.S. Department of Homeland Security ("DHS"), an  
15 agency of the United States, is responsible for the administration of the immigration laws. 8  
16 U.S.C. § 1103(a). They are a legal custodian of Petitioner. They are named in their official  
17 capacity.

18 16. Respondent Acting or Current Attorney General of the United States is the most  
19 senior official in the U.S. Department of Justice ("DOJ"). They have the authority to interpret the  
20 immigration laws and adjudicate removal cases. They delegate this responsibility to the  
21 Executive Office for Immigration Review ("EOIR"), which administers the immigration courts  
22 and the Board of Immigration Appeals ("BIA"). They are named in their official capacity.

23 17. Respondent Acting or Current Field Office Director of the San Diego ICE  
24 Field Office is responsible for the San Diego Field Office of ICE with administrative  
25 jurisdiction over Petitioner's case. They are a legal custodian of Petitioner and are named in their  
26 official capacity.

27 18. Respondent Acting or Current Director of ICE is responsible for ICE's policies,  
28

1 practices, and procedures, including those relating to the detention of immigrants. They are a  
2 legal custodian of Petitioner and are named in their official capacity.

3 STATEMENT OF FACTS

4 19. Petitioner is a noncitizen currently detained by Respondents pending immigration  
5 removal proceedings. Petitioner is pursuing the following claims in removal proceedings [*escriba*  
6 *todos los aplicaciones de alivio que usted esta presentando en su caso de deportacion*]:

- 7 (1) Cancellation of removal (2) Withholding of removal (3) Adjustment of status  
8 (4) motion to vacate

9  
10 20. Petitioner has been detained in DHS custody since August 22nd, 2023  
11 [*escriba el mes y año en que comenzó su detención por ICE*].

12 21. Petitioner has not been provided a bond hearing before a neutral decisionmaker to  
13 determine whether their prolonged detention is justified based on danger or flight risk.

14 22. Pursuant to 8 U.S.C. § 1226(c), the Immigration Court lacks jurisdiction and  
15 authority to provide Petitioner with a bond hearing to determine whether Petitioner’s detention is  
16 justified. There is no statutory or regulatory pathway for Petitioner to seek a bond hearing before  
17 a neutral decisionmaker.

18 23. Absent intervention by this Court, Petitioner cannot and will not be provided with  
19 a bond hearing by a neutral decisionmaker to assess the propriety of Petitioner’s continued  
20 detention.

21 24. Additional facts that support Petitioner’s entitlement to relief are [*escriba datos*  
22 *adicionales sobre su detención que desee que el juez sepa*]:

23 I have been detained for nearly three years in DHS/ ICE custody awaiting my fate in immigration  
24 court which I have no idea or knowledge how much longer it will take. It is very difficult for  
25 me to communicate with my pro bono lawyer because of how busy he is. It is extremely hard  
26 for me to represent, speak up for myself, and needs because I do not speak English. I have  
27 been bounced around a couple of states and three different facilities which all have been

1 extremely inhumane in my personal experience. I have been on multiple hunger strikes, have  
2 become a target for my efforts to speak up for myself by being labeled a "trouble maker"  
3 when only requesting the most basic toiletries and medical needs. While housed in an Arizona  
4 detention facility I was in an argument with an officer and while I accidentally spat in the middle  
5 of my words, I was accused of spitting on the officers face and was literally beaten by several  
6 officers inside a cell while I was shackled and had a mask over my face that constricted my breathing.  
7 The inability to speak English has been an extreme burden for me because I am not able to  
8 speak with staff about my concerns which end up being disregarded and sometimes even laughed  
9 at while I am ridiculed and called names like "chango" -meaning monkey. I have tried many  
10 times to grievance but my attempts go unanswered and ignored. I have been labeled by the  
11 immigration courts a Franco class detainee, referring me as having mental disabilities and yet  
12 I do not receive any help or support from any facility's psychology staff even when I am being  
13 "disruptive" in my complaints and request. I have lost almost all communication with my family  
14 because of how long I have been detained and when I do reach someone, I have no idea what  
15 how to answer questions regarding my case or when I'll be getting out. With the 9th Circuit  
16 Court being challenged and the courts rulings on the Gomez PC.245 constantly changing  
17 until January 13th, of this year, I have been at a complete stand still awaiting a stable and firm  
18 decision from the courts in order to finalize my applications for relief. Because my communication  
19 with my lawyer is very little, I have yet to hear any update on my custody redetermination even  
20 though the court has ruled once again that I am not an aggravated felony holder because of  
21 my previous conviction.



1 his risk of flight and dangerousness” may be warranted “if the continued detention became  
2 unreasonable or unjustified”); *see also Jackson v. Indiana*, 406 U.S. 715, 733 (1972) (holding  
3 that detention beyond the “initial commitment” requires additional safeguards); *McNeil v. Dir.*,  
4 *Patuxent Inst.*, 407 U.S. 245, 249-50 (1972) (holding that “lesser safeguards may be appropriate”  
5 for “short-term confinement”); *Hutto v. Finney*, 437 U.S. 678, 685-86 (1978) (holding that, in the  
6 Eighth Amendment context, “the length of confinement cannot be ignored in deciding whether  
7 [a] confinement meets constitutional standards”); *Reid v. Donelan*, 17 F.4th 1, 7 (1st Cir.  
8 2021) (holding that “the Due Process Clause imposes some form of reasonableness limitation  
9 upon the duration of detention” under section 1226(c)) (internal quotation marks omitted).

10  
11 **A. Detention That Exceeds Six Months Without A Bond Hearing Is Unconstitutional.**

12 28. Detention without a bond hearing is unconstitutional when it exceeds six months.  
13 *See Demore*, 538 U.S. at 529-30 (upholding only “brief” detentions under Section 1226(c),  
14 which last “roughly a month and a half in the vast majority of cases in which it is invoked, and  
15 about five months in the minority of cases in which the [noncitizen] chooses to appeal”);  
16 *Zadvydass*, 533 U.S. at 701 (“Congress previously doubted the constitutionality of detention for  
17 more than six months.”); *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1091 (9th Cir. 2022) (“[O]nce  
18 the [noncitizen] has been detained for approximately six months, continuing detention becomes  
19 prolonged” (cleaned up) (quoting *Diouf v. Napolitano*, 634 F.3d 1081, 1091 (9th Cir. 2011)));  
20 *Rodriguez v. Nielsen*, Case No. 18-CV-04187-TSH, 2019 WL 7491555, at \*6 (N.D. Cal. Jan. 7,  
21 2019) (“[D]etention becomes prolonged after six months and entitles [Petitioner] to a bond  
22 hearing”).

23 29. The recognition that six months is a substantial period of confinement—and is the  
24 time after which additional process is required to support continued incarceration—is deeply  
25 rooted in our legal tradition. With few exceptions, “in the late 18th century in America crimes  
26 triable without a jury were for the most part punishable by no more than a six-month prison  
27 term.” *Duncan v. Louisiana*, 391 U.S. 145, 161 & n.34 (1968). Consistent with this tradition, the  
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1 Supreme Court has found six months to be the limit of confinement for a criminal offense that a  
2 federal court may impose without the protection afforded by jury trial. *Cheff v. Schnackenberg*,  
3 384 U.S. 373, 380 (1966) (plurality opinion). The Court has also looked to six months as a  
4 benchmark in other contexts involving civil detention. *See McNeil v. Dir., Patuxent Inst.*, 407  
5 U.S. 245, 249, 250-52 (1972) (recognizing six months as an outer limit for confinement without  
6 individualized inquiry for civil commitment). The Court has likewise recognized the need for  
7 bright line constitutional rules in other areas of law. *See Maryland v. Shatzer*, 559 U.S. 98, 110  
8 (2010) (holding that 14 days must elapse following invocation of *Miranda* rights before re-  
9 interrogation is permitted); *Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 55-56 (1991) (holding  
10 that a probable cause hearing must take place within 48 hours of warrantless arrest).

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

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

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

24 32. Petitioner faces severe hardships while detained by ICE. Petitioner is held in a  
25 locked down facility, with limited freedom of movement and access to Petitioner's family or  
26 support network: "[T]he circumstances of their detention are similar, so far as we can tell,  
27 to those in many prisons and jails." *Jennings*, 138 S. Ct. at 861 (Breyer, J., dissenting); *accord*  
28

1 *Chavez–Alvarez v. Warden York Cnty. Prison*, 783 F.3d 469, 478 (3d Cir. 2015); *Ngo v. INS*, 192  
2 F.3d 390, 397-98 (3d Cir. 1999); *Sopo v. U.S. Att’y Gen.*, 825 F.3d 1199, 1218, 1221 (11th Cir.  
3 2016). “And in some cases the conditions of their confinement are inappropriately poor”  
4 including, for example, “invasive procedures, substandard care, and mistreatment, *e.g.*,  
5 indiscriminate strip searches, long waits for medical care and hygiene products, and, in the case  
6 of one detainee, a multiday lock down for sharing a cup of coffee with another detainee.”  
7 *Jennings*, 138 S. Ct. at 861 (Breyer, J., dissenting) (citing Press Release, Off. of Inspector Gen.,  
8 Dept. of Homeland Sec., *DHS OIG Inspection Cites Concerns With Detainee Treatment and*  
9 *Care at ICE Detention Facilities* (Dec. 14, 2017)); *see also* Tom Dreisbach, *Government’s own*  
10 *experts found ‘barbaric’ and ‘negligent’ conditions in ICE detention*, NPR (Aug. 16, 2023, 5:01  
11 AM) (reporting on the “‘negligent’ medical care (including mental health care), ‘unsafe and  
12 filthy’ conditions, racist abuse of detainees, inappropriate pepper-spraying of mentally ill  
13 detainees and other problems that, in some cases, contributed to detainee deaths” contained in  
14 inspection reports prepared by experts from the Department of Homeland Security’s Office for  
15 Civil Rights and Civil Liberties after examining detention facilities between 2017 and 2019).  
16 Individuals at GoldenState Annex Detention Facility have described receiving food  
17 contaminated with insects (including cockroaches, flies, and spiders), hair, and other foreign  
18 objects. *See* California Collaborative for Immigrant Justice, *Starving for Justice: The Denial of*  
19 *Proper Nutrition in Immigration Detention*, at p. 7 (April 2022), available at  
20 [https://www.ccijjustice.org/files/ugd/733055\\_c43b1cbbdda341b894045940622a6dc3.pdf](https://www.ccijjustice.org/files/ugd/733055_c43b1cbbdda341b894045940622a6dc3.pdf). At  
21 Mesa Verde Detention Facility, over 80% of detained individuals who responded to one survey  
22 said they had received expired food. *Id.*

23 33. The *Mathews* test for procedural due process claims balances: (1) the private  
24 interest threatened by governmental action; (2) the risk of erroneous deprivation of such interest  
25 and the value of additional or substitute safeguards; and (3) the government interest. *Mathews v.*  
26 *Eldridge*, 424 U.S. 319, 335 (1976); *see also* *Salesh P.*, 2022 WL 17082375, at \*8 (collecting  
27 cases where judges in the Northern District of California applied the *Mathews* factors to a habeas  
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1 petitioner's due process claims). Here, each factor weighs in Petitioner's favor, requiring this  
2 Court to promptly hold a hearing to evaluate whether the government can justify their ongoing  
3 detention.

4 34. First, Petitioner indisputably has a weighty interest in their liberty, the core  
5 private interest at stake here. *Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment. . . lies at  
6 the heart of the liberty [the Due Process Clause] protects."). Petitioner, who is being held in  
7 "incarceration-like conditions," has an overwhelming interest here, regardless of the length of his  
8 immigration detention, because "any length of detention implicates the same" fundamental  
9 rights. *Rajnish v. Jennings*, No. 3:20-cv-07819-WHO, 2020 WL 7626414, at \*6 (N.D. Cal. Dec.  
10 22, 2020).

11 35. Second, Petitioner will suffer the erroneous risk of deprivation of their liberty  
12 without an individualized evidentiary hearing. The risk of erroneous deprivation of their liberty  
13 is high, as they have been detained since August 22nd, 2023 [*escriba el mes y año en*  
14 *que comenzó su detención por ICE*] without any evaluation of whether the government can  
15 justify detention under their individualized circumstances. "[T]he risk of an erroneous  
16 deprivation of liberty in the absence of a hearing before a neutral decisionmaker is substantial."  
17 *Diouf*, 634 F.3d at 1092. Conversely, "the probable value of additional procedural safeguards—  
18 an individualized evaluation of the justification for his detention—is high, because Respondents  
19 have provided virtually no procedural safeguards at all." *Jimenez v. Wolf*, No. 19-cv-07996-NC,  
20 2020 WL 510347, \*3 (N.D. Cal. Jan. 30, 2020) (granting habeas petition for person who had  
21 been detained for one year without a bond hearing).

22 36. Third, the government's interest is very low in continuing to detain Petitioner  
23 without providing any neutral review. *See Mathews*, 424 U.S. at 335. The specific interest at  
24 stake here is not the government's ability to continue to detain Petitioner, but rather the  
25 government's ability to continue to detain them for months on end without any individualized  
26 review. *See Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 964 (N.D. Cal. 2019); *Henriquez v.*  
27 *Garland*, No. 5:22-CV-00869-EJD, 2022 WL 2132919, at \*5 (N.D. Cal. June 14, 2022). The

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1 cost of providing an individualized inquiry is minimal. *See Henriquez*, 2022 WL 2132919, at \*5.  
2 The government has repeatedly conceded this fact. *See Lopez Reyes v. Bonnar*, 362 F. Supp. 3d  
3 762, 777 (N.D. Cal. 2019); *Singh v. Barr*, 400 F. Supp. 3d 1005, 1021 (S.D. Cal. 2019);  
4 *Marroquin Ambriz*, 420 F. Supp. 3d at 964.

5 37. In sum, the *Mathews* factors establish that Petitioner is entitled to an evidentiary  
6 hearing before a neutral adjudicator. Unsurprisingly, courts applying these standards in this  
7 District and Circuit have repeatedly held that prolonged detention without a hearing before a  
8 neutral adjudicator violates procedural due process for individuals who were held under the same  
9 detention statute. See, e.g., *Romero Romero v. Wolf*, No. 20-CV-08031-TSH, 2021 WL 254435,  
10 at \*2, \*5 (N.D. Cal. Jan. 26, 2021) (holding that the petitioner's detention under § 1226(c) of just  
11 over one year without a custody hearing was "not compatible with due process" and granting  
12 habeas); *Jimenez*, 2020 WL 510347, at \*1, \*2, \*4 (holding that the petitioner's detention under §  
13 1226(c) of just over one year without a custody hearing violated his due process rights and  
14 granting habeas); *Gonzalez v. Bonnar*, No. 18-CV-05321-JSC, 2019 WL 330906, at \*1, \*5 (N.D.  
15 Cal. Jan. 25, 2019) (holding that the petitioner's detention under § 1226(c) for just over one year  
16 without a custody hearing violates his due process rights and granting habeas). This Court should  
17 so hold as well.

18 38. *Rodriguez Diaz v. Garland*, 53 F.4<sup>th</sup> 1189 (9th Cir. 2022), does not disturb this  
19 result. In *Rodriguez Diaz*, the Ninth Circuit applied the *Mathews* test to hold that the detention of  
20 a noncitizen detained under a different detention statute, 8 U.S.C. § 1226(a), did not violate  
21 procedural due process. 53 F.4<sup>th</sup> at 1195. Unlike § 1226(c), § 1226(a)-mandates that detained  
22 individuals receive an individualized bond hearing at the outset of detention and provides for  
23 further bond hearings upon a material change in circumstances. *See* 8 C.F.R. § 1003.19e. The  
24 panel's decision in *Rodriguez Diaz* was predicated on the immediate and ongoing availability of  
25 this administrative process under § 1226(a). 53 F.4<sup>th</sup> at 1202 ("Section 1226(a) and its  
26 implementing regulations provide extensive procedural protections that are unavailable under  
27 other detention provisions . . ."). Unlike the petitioner in *Rodriguez Diaz*, Petitioner has no  
28

1 statutory access to individualized review of his detention.

2 39. Alternatively, courts that apply a reasonableness test have considered four non-  
3 exhaustive factors in determining whether detention is reasonable. *German Santos v. Warden*  
4 *Pike Cnty. Corr. Facility*, 965 F.3d 203, 210-22 (3d Cir. 2020). The reasonableness inquiry is  
5 “highly fact-specific.” *Id.* at 210. “The most important factor is the duration of detention.” *Id.* at  
6 211; *see also Gonzalez v. Bonnar*, No. 18-CV-05321-JSC, 2019 WL 330906, at \*1, \*5 (N.D.  
7 Cal. Jan. 25, 2019) (concluding that the petitioner’s detention under § 1226(c) for just over one  
8 year without a custody hearing weighed strongly in favor of finding detention unreasonable, and  
9 violated his due process rights and granting habeas). Duration is evaluated along with “all the  
10 other circumstances,” including (1) whether detention is likely to continue, (2) reasons for the  
11 delay, and (3) whether the conditions of confinement are meaningfully different from criminal  
12 punishment. *Id.* at 211.

13 40. As noted, Petitioner has been detained for a substantial length of time, *supra* ¶ 20  
14 and Petitioner’s detention is likely to continue as Petitioner asserts their right to seek  
15 immigration relief, *supra* ¶ 19. Noncitizens should not be punished for pursuing “legitimate  
16 proceedings” to seek relief. *See Masood v. Barr*, No. 19-CV-07623-JD, 2020 WL 95633, at \*3  
17 (N.D. Cal. Jan. 8, 2020) (“[I]t ill suits the United States to suggest that [Petitioner] could shorten  
18 his detention by giving up these rights and abandoning his asylum application.”). Thus, courts  
19 should not count a continuance against the noncitizen when they obtained it in good faith to  
20 prepare their removal case, including efforts to obtain counsel: *See Hernandez Gomez*, 2023 WL  
21 2802230, at \*4 (“The duration and frequency of these requests [for continuances] do not  
22 diminish his significant liberty interest in his release or his irreparable injury of continued  
23 detention without a bond hearing.”). Moreover, Petitioner’s confinement and experiences at a  
24 facility operated by a private, for-profit prison contractor, demonstrate that their conditions of  
25 confinement are not meaningfully different from those of criminal punishment. *See supra* ¶¶ 10,  
26 24, 32.

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

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

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

27 43. Where the Supreme Court has permitted civil detention in other contexts, it has  
28 relied on the fact that the Government bore the burden of proof by at least clear and convincing

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

7 44. 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  
10 ‘freedom from prolonged detention’ is ‘unquestionably substantial.’” *See Rodriguez Diaz*, 53  
11 F.4th at 1207 (citing *Singh*, 638 F.3d at 1208). Second, the risk of error is great where the  
12 government is represented by trained attorneys and detained noncitizens are often unrepresented  
13 and may lack English proficiency. *See Santosky v. Kramer*, 455 U.S. 745, 763 (1982) (requiring  
14 clear and convincing evidence at parental termination proceedings because “numerous factors  
15 combine to magnify the risk of erroneous factfinding” including that “parents subject to  
16 termination proceedings are often poor, uneducated, or members of minority groups” and “[t]he  
17 State’s attorney usually will be expert on the issues contested”). Moreover, detained noncitizens  
18 are incarcerated in prison-like conditions that severely hamper their ability to obtain legal  
19 assistance, gather evidence, and prepare for a bond-hearing. *See supra* ¶ 32. Third, placing the  
20 burden on the government imposes minimal cost or inconvenience to it, as the government has  
21 access to the noncitizen’s immigration records and other information that it can use to make its  
22 case for continued detention.

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

24 45. 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  
27 there are alternative conditions of release that could mitigate risk of flight. *See Bell v. Wolfish*,

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1 441 U.S. 520, 538–39 (1979) (civil pretrial detention may be unconstitutionally punitive if it is  
2 excessive in relation to its legitimate purpose). ICE’s alternatives to detention program—the  
3 Intensive Supervision Appearance Program—has achieved extraordinary success in ensuring  
4 appearance at removal proceedings, reaching compliance rates close to 100 percent. *Hernandez*  
5 *v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017) (observing that ISAP “resulted in a 99%  
6 attendance rate at all EOIR hearings and a 95% attendance rate at final hearings”). Thus,  
7 alternatives to detention must be considered in determining whether prolonged incarceration is  
8 warranted.

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

21 **CLAIM FOR RELIEF**

22 **VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO**  
23 **THE U.S. CONSTITUTION**

24 47. Petitioner re-alleges and incorporates by reference the paragraphs above.

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

27 49. To justify Petitioner’s ongoing prolonged detention, due process requires that the  
28

1 government establish, at an individualized hearing before a neutral decisionmaker, that  
2 Petitioner's detention is justified by clear and convincing evidence of flight risk or danger,  
3 taking into account whether alternatives to detention could sufficiently mitigate that risk.

4 50. For these reasons, Petitioner's ongoing prolonged detention without a hearing  
5 violates due process.

6 PRAYER FOR RELIEF


7 WHEREFORE, Petitioner respectfully requests that this Court:

- 8 1) Assume jurisdiction over this matter;
  - 9 2) Issue a Writ of Habeas Corpus, hold a hearing before this Court if warranted,  
10 determine that Petitioner's detention is not justified because the government has  
11 not established by clear and convincing evidence that Petitioner presents a risk of  
12 flight or danger in light of available alternatives to detention, and order  
13 Petitioner's release (with appropriate conditions of supervision if necessary),  
14 taking into account Petitioner's ability to pay a bond;
  - 15 3) In the alternative, issue a Writ of Habeas Corpus and order Petitioner's release  
16 within 30 days unless Respondents schedule a hearing before an immigration  
17 judge where: (1) to continue detention, the government must establish by clear  
18 and convincing evidence that Petitioner presents a risk of flight or danger, even  
19 after consideration of alternatives to detention that could mitigate any risk that  
20 Petitioner's release would present; and (2) if the government cannot meet its  
21 burden, the immigration judge order Petitioner's release on appropriate  
22 conditions of supervision, taking into account Petitioner's ability to pay a bond;
  - 23 4) Issue a declaration that Petitioner's ongoing prolonged detention violates the Due  
24 Process Clause of the Fifth Amendment;
  - 25 5) Award Petitioner his costs and reasonable attorneys' fees in this action as  
26 provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412; and
  - 27 6) Grant such further relief as the Court deems just and proper.
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03/25/2026  
Date [Fecha]

Junior - Noel, Vasquez - Calix  
Printed Name [Nombre Impreso]

  
Signature [Firma]

Detained in ICE Custody at: [check one / marque uno]

Mesa Verde Detention Facility, 425 Golden State Ave, Bakersfield, CA 93301

Golden State Annex, 611 Frontage Road, McFarland, CA 93250

Imperial Regional Detention Facility, 1572 Gateway Road, Calexico, CA 92231