



UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Oscar, Maldonado - Romero

[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. '26CV2366 RBM SBC

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:

INTRODUCTION

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

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

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

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

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

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<sup>1</sup> Petitioner respectfully requests that the Court use his initials, rather than his full last name, in any opinion in his case, as suggested by the Committee on Court Administration and Case Management of the Judicial Conference of the United States. *See* Memorandum Re: Privacy 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).

JURISDICTION

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

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

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

VENUE

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

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

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

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

#### REQUIREMENTS OF 28 U.S.C. § 2243

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

<sup>2</sup> See also *I.E.S. v. Becerra*, No. 23-CV-03783-BLF, 2023 WL 6317617, at \*5 (N.D. Cal. Sept. 27, 2023) (holding that San Francisco ICE Field Office Director is proper habeas respondent); *Gomez v. Becerra*, No. 23-CV-03724-JCS, 2023 WL 6232236, at \*4 (N.D. Cal. Sept. 25, 2023) (same); *id.* at \*4 n.2 (noting that “[a]t least fourteen judges in this district” have concluded the same, and not one has held otherwise); *Martinez Leiva v. Becerra*, No. 23-CV-02027-CRB, 2023 WL 3688097, at \*4 (N.D. Cal. May 26, 2023) (same); *Hernandez Gomez v. Becerra*, No. 23-CV-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); *Sales 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) Asylum (2) withholding of removal (3) Adjustment of status  
8  
9

10 20. Petitioner has been detained in DHS custody since October 30th, 2025  
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 over six months now being in detention by ICE while awaiting the  
24 final decision in my case which has been prolonged and I am now in BIA awaiting a decision.  
25 Being in BIA means I can be detained for up to a year awaiting the decision for my case and  
26 still have to go through the even longer process of The Ninth Circuit Court of Appeals that  
27 can take even three years while my family is struggling to make ends meet as I was the sole  
28

1 provider for my house hold. My family has spent almost the remaining of the entire family's  
2 savings on legal representation for my immigration case which we just cant keep up with as the  
3 bills and fees keep accumulating. It is extremely hard for me to prepare for my case because  
4 I speak Spanish and it takes a long time to get help from other detainees to translate important  
5 documents for my case. I am housed in a facility which is ran very unprofessional and even  
6 worse than a prison by the facility administration. The entire population is harassed in various  
7 forms like targeted searches in very early hours of the day while we are forced to wait outside  
8 in the yard while our property is ransacked, lost, and damaged beyond repair. Calling out to my  
9 family and lawyer takes a lot of money as well because the calls are not free. Medical Staff  
10 in the facility seem to be rude and even disrespectful when addressing our needs from minor  
11 injuries to serious medical conditions. The incompetent and rude behavior is constant and by  
12 even top supervisory staff from medical and administration. On July 25th 2025, I underwent  
13 a serious and very sensitive surgery on my spine which until this day causes severe pain and  
14 discomfort for even small movements or even sleeping. I have had serious pain and incidents  
15 where I have been ignored for hours until medical staff took me to medical and eventually  
16 disregarded my sensitive needs. Being in detention while suffering from this serious injury  
17 causes additional stress emotionally, physically, and psychologically not only to me but also  
18 my family as we go days without communication because the family is going through such  
19 harsh financial difficulties because of my detention. I have three children which are constantly  
20 going through serious difficulties including that of my oldest son that is 9 years old and has  
21 to deal with autism without his father being physically there with him as me and him are  
22 extremely close. Furthermore, being detained, I cannot receive the very expensive physical  
23 therapies that I had already paid for while out and are very much needed for my full  
24 rehabilitation.

LEGAL BACKGROUND

25. “It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty” that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see also id.* at 718 (Kennedy, J., dissenting) (“Liberty under the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention.”). This fundamental due process protection applies to all noncitizens, including both removable and inadmissible noncitizens. *See id.* at 721 (Kennedy, J., dissenting) (“[B]oth removable and inadmissible [noncitizens] are entitled to be free from detention that is arbitrary or capricious”).

26. 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.” *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted). In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention—to mitigate the risks of danger to the community and to prevent flight. *Id.*; *Demore*, 538 U.S. at 528.

27. Due process requires that the government provide bond hearings to noncitizens facing prolonged detention. “The Due Process Clause foresees eligibility for bail as part of due process” because “[b]ail is basic to our system of law.” *Jennings*, 138 S. Ct. at 862 (Breyer, J., dissenting) (internal quotation marks omitted). While the Supreme Court upheld the mandatory detention of a noncitizen under Section 1226(c) in *Demore*, it did so based on the petitioner’s concession of deportability and the Court’s understanding at the time that detentions under Section 1226(c) are typically “brief.” *Demore*, 538 U.S. at 522 n.6, 528. Where a noncitizen has been detained for a prolonged period or is pursuing a substantial defense to removal or claim to relief, due process requires an individualized determination that such a significant deprivation of liberty is warranted. *Id.* at 532 (Kennedy, J., concurring) (“[I]ndividualized determination as to



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

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

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

29. The recognition that six months is a substantial period of confinement—and is the time after which additional process is required to support continued incarceration—is deeply rooted in our legal tradition. With few exceptions, “in the late 18th century in America crimes triable without a jury were for the most part punishable by no more than a six-month prison term.” *Duncan v. Louisiana*, 391 U.S. 145, 161 & n.34 (1968). Consistent with this tradition, the

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  
12 **B. Even Absent A Bright-Line Six-Month Standard, An Individualized Bond  
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.ccijustice.org/files/ugd/733055\\_c43b1cbbdda341b894045940622a6dc3.pdf](https://www.ccijustice.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  
28

petitioner's due process claims). Here, each factor weighs in Petitioner's favor, requiring this Court to promptly hold a hearing to evaluate whether the government can justify their ongoing detention.

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

35. Second, Petitioner will suffer the erroneous risk of deprivation of their liberty without an individualized evidentiary hearing. The risk of erroneous deprivation of their liberty is high, as they have been detained since October 30th, 2025 [*escriba el mes y año en que comenzó su detención por ICE*] without any evaluation of whether the government can justify detention under their individualized circumstances. "[T]he risk of an erroneous deprivation of liberty in the absence of a hearing before a neutral decisionmaker is substantial." *Diouf*, 634 F.3d at 1092. 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 v. Wolf*, No. 19-cv-07996-NC, 2020 WL 510347, \*3 (N.D. Cal. Jan. 30, 2020) (granting habeas petition for person who had been detained for one year without a bond hearing).

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

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.

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

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

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

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

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.
- 28



04/09/26  
Date [Fecha]

Oscar, Maldonado - Romero  
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