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7 **UNITED STATES DISTRICT COURT**  
8 **SOUTHERN DISTRICT OF CALIFORNIA**

9 **Rabia Betul Yildiz,**

Case No.: **'26CV2863 JLS VET**

10 Petitioner

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

11 vs.

12 **Christopher J LaRose**, Senior Warden Otay  
13 **Mesa Detention Center; Markwayne**  
14 **Mullin**, Secretary Department of Homeland  
15 **Security; Todd M Lyons** Performing the  
16 **Duties of the Immigration and Customs**  
17 **Enforcement; Pamela Bondi** United States  
18 **Attorney General**

19 Respondents

20 **PETITION FOR WRITE OF HABEAS CORPUS**  
21 **PURSUANT TO 28 U.S.C. §2241**

22 Petitioner respectfully petitions this Honorable court for writ of habeas corpus to remedy  
23 petitioner's unlawful detention by the respondents as follows:

24 Dated this May 05, 2026

25 *Sajjad Hussain*

26 /s/Sajjad Hussain  
27 Sajjad Hussain, Esq.

1                   **I. INTRODUCTION:**

- 2           1. Petitioner Rabia Betul Yildiz (“Petitioner” or “Ms. Yildiz”) has been civilly detained by  
3           U.S. Immigration and Customs Enforcement (“ICE”) at the Otay Mesa Detention Center  
4           (“Otay Mesa”) since September 05, 2025—approximately Eight months. During this  
5           entire period, Ms. Yildiz has had no bond hearing. ICE cannot presently remove Ms.  
6           Yildiz from the United States because her applications for asylum, withholding of  
7           removal, and protection under the Convention Against Torture remain pending. Absent  
8           any change in policy or law, Respondents may continue to detain Ms. Yildiz throughout  
9           the appellate process. As a result, she faces many additional months in civil detention,  
10          and potentially a year or more if the matter is appealed.  
11
- 12
- 13          2. This prolonged detention has taken a significant toll. Ms. Yildiz’s continued detention  
14          is constitutionally permissible only if Respondents can demonstrate before a neutral  
15          decision-maker that he poses a danger to the community or a flight risk, or that her  
16          removal is imminent. Otherwise, such extended civil confinement violates the Due  
17          Process Clause and the limits imposed by the Immigration and Nationality Act (“INA”).  
18
- 19          3. Ms. Yildiz’s continued detention without an individualized bond hearing before a  
20          neutral decisionmaker violates the Due Process Clause of the Fifth Amendment.  
21
- 22          4. This Court should issue a writ of habeas corpus and determine that Ms. Yildiz is entitled  
23          to immediate release under reasonable conditions and pending further order of the  
24          Court.
- 25          5. Alternatively, this Court should order Ms. Yildiz’s release unless she receives a bond  
26          hearing before a neutral arbiter where: (1) the government bears the burden to establish  
27          by clear and convincing evidence that Ms. Yildiz is a danger or flight risk to justify her  
28

1 continued detention, even after consideration of alternatives to detention that could  
2 mitigate any risk his release would present; and (2) if the government cannot meet its  
3 burden, Ms. Yildiz must be ordered released on reasonable conditions, taking into  
4 account his ability to pay bond.  
5

6 **II. CUSTODY**

- 7 6. Ms. Yildiz is detained in the legal and physical custody of Respondents at the Otay  
8 Mesa, where she is under the direct control of Respondents and their agents.  
9

10 **III. JURISDICTION**

- 11 7. This action arises under the Constitution of the United States and the Immigration and  
12 Nationality Act, 8 U.S.C. § 1101 et seq.  
13 8. Jurisdiction is proper under 28 U.S.C § 2241 (habeas corpus); 28 U.S.C. § 1331 (federal  
14 question); 28 U.S.C. § 1651 (All Writs Act); U.S. Const. art. I, § 9, cl. 2 (the Suspension  
15 Clause); and 5 U.S.C. § 702 (Administrative Procedure Act).  
16

17 **IV. VENUE**

- 18 9. Venue is proper in this district under 28 U.S.C. § 1391(b) and (e) because at least one  
19 Respondent—Respondent Christopher J LaRose, the legal custodian of Ms. Yildiz—is  
20 in this District, and a substantial part of the events giving rise to the claims in this action  
21 took place in this District. All material decisions about Ms. Yildiz’s detention have been  
22 made at the San Diego Field Office of ICE, which is located within San Diego,  
23 California.  
24

25 **V. EXHAUSTION**

- 26 10. Petitioner is not required to exhaust administrative remedies before seeking habeas  
27 relief, exhaustion in habeas cases is prudential rather than jurisdictional. See *Laing v.*  
28

1           *Ashcroft*, 370 F.3d 994, 997 (9th Cir. 2004). The prudential exhaustion requirement may  
2           be waived where “administrative remedies are inadequate or not efficacious, pursuit of  
3           administrative remedies would be a futile gesture, [or] irreparable injury will  
4           result.” *Id.* at 1000.  
5

6           11. Exhaustion for habeas claims is prudential, not jurisdictional. See *Laings. Yildiz v.*  
7           *Ashcroft*, 370 F.3d 994, 997 (9th Cir. 2004). The prudential exhaustion requirement  
8           may be waived if ““administrative remedies are inadequate or not efficacious, pursuit of  
9           administrative remedies would be a futile gesture, [or] irreparable injury will result.””  
10           *Id.* at 1000. Administrative remedies would be futile, inadequate, and not efficacious  
11           for Ms. Yildiz. Exhausting her constitutional claim would be futile because the agency  
12           does not have the authority to rule on constitutional questions. See *Wang v. Reno*, 81  
13           F.3d 808, 815–16 (9th Cir. 1996) (*per curiam*) (“the inability of the INS to adjudicate  
14           the constitutional claim completely undermines most, if not all, of the purposes  
15           underlying exhaustion”).  
16  
17

## 18           VI. PARTIES

19           12. Petitioner is a native and citizen of Turkey who is detained in the custody of  
20           Immigration and Customs Enforcement at Otay Mesa detention center, CA.

21           13. Respondent **Christopher J. Larose** is the Senior Warden of Otay Mesa Detention  
22           Center, where Petitioner is detained. He is sued in his official capacity.  
23


24           14. Respondent **Markwayne Mullin** is the Secretary of the Department of Homeland  
25           Security, an agency of the United States is responsible for the administration and  
26           enforcement of the immigration laws. See 8 U.S.C. § 1103(a). Respondent is a legal  
27           custodian of Petitioner. He is sued in his official capacity.  
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1 15. Respondent **Todd M. Lyons** is performing the duties of the Director of U.S.  
2 Immigration and Customs Enforcement (ICE). He is sued in his official capacity.

3 16. Respondent **Todd Blanche** is the Attorney General of the United States. As Attorney  
4 General, Respondent has the authority to interpret the immigration laws and adjudicate  
5 removal cases and bond hearings. See 8 U.S.C. § 1103(g). The Attorney General  
6 delegates this responsibility to the Executive Office for Immigration Review, which  
7 administers the immigration courts and the BIA. Respondent Blanche is a legal  
8 custodian of Petitioner. He is sued in his official capacity.

9  
10 **VII. FACTUAL ALLEGATIONS.**

11  
12 17. Petitioner, Rabia Betul Yildiz, entered the United States near San Ysidro, California, on  
13 or about September 2025 without being admitted or paroled and was subsequently  
14 placed in removal proceedings under section 212(a)(6)(A)(i) of the Immigration and  
15 Nationality Act, *Form I 213, Ex 1*. She applied for asylum, withholding of removal, and  
16 protection under the Convention Against Torture, and her case proceeded through  
17 immigration court, where relief was denied and is currently pending on appeal before  
18 the Board of Immigration Appeals.

19  
20 18. Petitioner is a 19-year-old native and citizen of Türkiye who is currently detained by  
21 U.S. Immigration and Customs Enforcement (“ICE”) at the Otay Mesa Detention Center  
22 in California. She was born  in Bakırköy, Türkiye, and identifies  
23 as Kurdish, a minority group that has historically faced discrimination and persecution  
24 in Türkiye, *Petitioner Passport Biographic Page Ex 2*.

25  
26 19. Petitioner has now been detained for approximately eight months. During this period,  
27 her physical and mental health have significantly deteriorated. As reflected in her  
28

1 medical and personal statements, Petitioner suffers from a herniated intervertebral disc,  
2 causing severe and chronic back pain, weakness, numbness, and difficulty walking. Her  
3 condition has been exacerbated by detention conditions, including sleeping on a steel  
4 bed, inadequate medical care, and lack of proper nutrition. The pain is persistent and  
5 debilitating, interfering with her ability to function on a daily basis, *Ex 3 Petitioner*  
6 *Statement; Ex 4 Medical Records.*

8 20. In addition to her physical condition, Petitioner suffers from serious mental health  
9 issues, including severe anxiety, depression, insomnia, and recurring nightmares. These  
10 symptoms are directly linked to past trauma, including sexual assault, and have been  
11 significantly worsened by prolonged detention. Petitioner is currently prescribed  
12 antidepressant medication; however, she continues to experience frequent panic attacks,  
13 sleep disturbances, and emotional distress. The lack of family support and the isolating  
14 nature of detention have further intensified her psychological suffering.

16 21. Petitioner's background reflects a history of persecution and trauma beginning at a  
17 young age. As detailed in her sworn asylum declaration, she and her family were  
18 subjected to longstanding discrimination and hostility in Türkiye due to their Kurdish  
19 ethnicity. This discrimination manifested in social exclusion, verbal abuse, and systemic  
20 marginalization in education, employment, and daily life. Her family members were  
21 targeted, threatened, and physically harmed, including a violent attack on her father by  
22 individuals motivated by ethnic animus, *Petitioner Declaration Re Asylum Application*  
23 *Ex 5.*

26 22. Petitioner herself experienced discrimination and harassment throughout her schooling,  
27 including verbal abuse by teachers and peers, exclusion from academic and  
28

1 extracurricular opportunities, and sexual harassment and assault. These experiences  
2 caused profound psychological harm and forced her to abandon her education. In 2023,  
3 following escalating threats and violence against her family, Petitioner fled Türkiye in  
4 fear for her life and safety, *Id.*  
5

6 23. Petitioner remains in ICE custody despite her ongoing legal proceedings and the fact  
7 that her removal is not imminent due to her pending appeal. Her continued detention  
8 has resulted in severe physical pain, worsening mental health conditions, and significant  
9 emotional distress. The prolonged nature of her detention, combined with her  
10 deteriorating health and traumatic history, has rendered her confinement increasingly  
11 punitive and harmful, *BIA Appeal Ex 6.*  
12

13 24. Immigration and Customs Enforcement (ICE) recently announced the death of another  
14 person in its custody — the 17th person so far in 2026. Deaths inside of immigration  
15 detention centers are rising and now occur at a rate of roughly one every six days. Since  
16 the start of President Donald Trump’s mass deportation campaign, more than 40  
17 people have died in immigration detention, the highest number recorded in such a short  
18 period<sup>1</sup>. *See Ex. 7, “Deaths in detention.”*  
19

20 25. Moreover, depending on the outcome of the proceedings before the EOIR, either party  
21 may appeal to the appropriate circuit court of appeals. Any such appeal would further  
22 prolong Petitioner’s detention for many additional months, if not years.  
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28 <sup>1</sup> <https://www.aclu.org/news/immigrants-rights/deaths-in-detention-ice-is-rapidly-expanding-detention-camps-into-warehouses-despite-record-deaths>

1 26. Accordingly, Petitioner’s detention is not meaningfully time limited. Instead, it is  
2 functionally indefinite and likely to continue for a considerable period absent judicial  
3 intervention. Given her serious medical vulnerabilities—including asthma, major  
4 depressive disorder, anxiety, and recurrent panic attacks—continued prolonged  
5 detention presents a substantial risk to her physical and mental health.  
6

## 7 **VII. LEGAL ARGUMENT**

### 8 **A. Petitioner Is Statutorily Entitled to A Bond Hearing**

9 27. “It is well established that the Fifth Amendment entitles [noncitizens] to due process  
10 of law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting  
11 *Reno v. Flores*, 507 U.S. 292, 306 (1993)). “Freedom from imprisonment—from  
12 government custody, detention, or other forms of physical restraint—lies at the heart of  
13 the liberty” that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690  
14 (2001); see also *id.* at 718 (Kennedy, J., dissenting) (“Liberty under the Due Process  
15 Clause includes protection against unlawful or arbitrary personal restraint or  
16 detention.”). This fundamental due process protection applies to all noncitizens,  
17 including both removable and inadmissible noncitizens. See *id.* at 721 (Kennedy, J.,  
18 dissenting) (“Both removable and inadmissible [noncitizens] are entitled to be free from  
19 detention that is arbitrary or capricious”).  
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22 28. Due process requires that the government provide bond hearings to noncitizens facing  
23 prolonged detention. “The Due Process Clause foresees eligibility for bail as part of due  
24 process” because “bail is basic to our system of law.” *Jennings*, 138 S. Ct. at 862 (Breyer,  
25 J., dissenting) (internal quotation marks omitted). While the Supreme Court upheld the  
26 mandatory detention of a noncitizen under Section 1226(c) in *Demore*, it did so based  
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1 on the petitioner’s concession of deportability and the Court’s understanding at the time  
2 that such detentions are typically “brief.” *Demore*, 538 U.S. at 522 n.6, 528. Where a  
3 noncitizen has been detained for a prolonged period or is pursuing a substantial defense  
4 to removal or claim to relief, due process requires an individualized determination that  
5 such a significant deprivation of liberty is warranted. *Id.* at 532 (Kennedy, J.,  
6 concurring) (“[I]ndividualized determination as to his risk of flight and dangerousness”  
7 may be warranted “if the continued detention became unreasonable or unjustified”); see  
8 also *Jackson v. Indiana*, 406 U.S. 715, 733 (1972) (holding that detention beyond the  
9 “initial commitment” requires additional safeguards); *McNeil v. Dir., Patuxent Inst.*,  
10 407 U.S. 245, 249-50 (1972) (holding that “lesser safeguards may be appropriate” for  
11 “short-term confinement”); *Hutto v. Finney*, 437 U.S. 678, 685-86 (1978) (holding that,  
12 in the Eighth Amendment context, “the length of confinement cannot be ignored in  
13 deciding whether [a] confinement meets constitutional standards”); *Reid v. Donelan*, 17  
14 F.4th 17 (1st Cir. 2021) (holding that “the Due Process Clause imposes some form of  
15 reasonableness limitation upon the duration of detention” under section 1226(c))  
16 (internal quotation marks omitted).  
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20 **B. Detention That Exceeds Six Months Without a Bond Hearing Is**  
21 **Unconstitutional.**  
22

23 29. Detention without a bond hearing is unconstitutional when it exceeds six months See  
24 *Demore*, 538 U.S. at 529-30 (upholding only “brief” detentions under Section 1226(c),  
25 which last “roughly a month and a half in the vast majority of cases in which it is  
26 invoked, and about five months in the minority of cases in which the [noncitizen]  
27 chooses to appeal”); *Zadvydas*, 533 U.S. at 701 (“Congress previously doubted the  
28

1 constitutional of detention for more than six months.”); *Rodriguez Diaz v. Garland*,  
2 53 F.4th 1189, 1091 (9th Cir. 2022) (“[O]nce the [noncitizen] has been detained for  
3 approximately six months, continuing detention becomes prolonged” (cleaned up)  
4 (quoting *Diouf v. Napolitano*, 634 F.3d 1081, 1091 (9th Cir. 2011))); *Rodriguez v.*  
5 *Nielsen*, Case No. 18-CV-04187-TSH, 2019 WL 7491555, at \*6 (N.D. Cal. Jan. 7, 2019)  
6 (“[D]etention becomes prolonged after six months and entitles [Petitioner] to a bond  
7 hearing”).  
8

9 30. The recognition that six months is a substantial period of confinement—and is the time  
10 after which additional process is required to support continued incarceration—is deeply  
11 rooted in our legal tradition. With few exceptions, “in the late 18th century in America  
12 crimes triable without a jury were for the most part punishable by no more than a six-  
13 month prison term.” *Duncan v. Louisiana*, 391 U.S. 145, 161 & n.34 (1968). Consistent  
14 with this tradition, the Supreme Court has found six months to be the limit of  
15 confinement for a criminal offense that a federal court may impose without the  
16 protection afforded by jury trial. *Cheff v. Schnackenberg*, 384 U.S. 373, 380 (1966)  
17 (plurality opinion). The Court has also looked to six months as a benchmark in other  
18 contexts involving civil detention. See *McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249,  
19 250-52 (1972) (recognizing six months as an outer limit for confinement without  
20 individualized inquiry for civil commitment). The Court has likewise recognized the  
21 need for bright line constitutional rules in other areas of law. See *Maryland v. Shatzer*,  
22 559 U.S. 98, 110 (2010) (holding that 14 days must elapse following invocation of  
23 Miranda rights before re-interrogation is permitted); *Cnty. of Riverside v. McLaughlin*,  
24 500 U.S. 44, 55-56 (1991) (holding that a probable cause hearing must take place within  
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1 48 hours of warrantless arrest). In this case Petitioner is detained for more than eight  
2 months as of today. Petitioner has been continuously detained since September 05, 2025  
3 31. Moreover, it is unlikely that proceedings will conclude at the BIA, as it is highly  
4 probable that one of the parties will appeal the outcome to the appropriate Circuit Court  
5 of Appeals. Any such appeal would necessarily prolong Petitioner’s detention for many  
6 additional months. If further judicial review is sought, her detention could extend well  
7 beyond one year. Accordingly, it is evident that Petitioner has no realistic possibility of  
8 release within six months of her detention—or even shortly thereafter—absent judicial  
9 intervention. Her continued confinement is not meaningfully time-limited; rather, it is  
10 prolonged, indeterminate, and contingent upon a multi-layered appellate process that  
11 may extend for a considerable period of time. Given her documented asthma, major  
12 depressive disorder, anxiety, and recurrent panic attacks, continued prolonged detention  
13 places Petitioner at a substantial risk of serious medical deterioration while she remains  
14 confined.  
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18 **C. Even Absent a Bright-Line Six-Month Standard, An Individualized Bond**  
19 **Hearing Is Required When Detention Becomes Unreasonably Prolonged.**

20 32. Petitioner faces severe hardships while detained by ICE. Petitioner is held in a locked  
21 down facility, with limited freedom of movement and access to Petitioner’s family or  
22 support network: “[T]he circumstances of their detention are similar, so far as we can  
23 tell, to those in many prisons and jails.” Jennings, 138 S. Ct. at 861 (Breyer, J.,  
24 dissenting); accord Chavez–Alvarez v. Warden York Cnty. Prison, 783 F.3d 469, 478  
25 (3d Cir. 2015); Ngo v. INS, 192 F.3d 390, 397-98 (3d Cir. 1999); Sopo v. U.S. Att’y  
26 Gen., 825 F.3d 1199, 1218, 1221 (11th Cir. 2016). “And in some cases, the conditions  
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1 of their confinement are inappropriately poor” including, for example, “invasive  
2 procedures, substandard care, and mistreatment, e.g., indiscriminate strip searches, long  
3 waits for medical care and hygiene products, and, in the case of one detainee, a multiday  
4 lock down for sharing a cup of coffee with another detainee.” Jennings, 138 S. Ct. at  
5 861 (Breyer, J., dissenting) (citing Press Release, Off. of Inspector Gen., Dept. of  
6 Homeland Sec., DHS OIG Inspection Cites Concerns With Detainee Treatment and  
7 Care at ICE Detention Facilities (Dec. 14, 2017)); see also Tom Dreisbach,  
8 Government's own experts found 'barbaric' and 'negligent' conditions in ICE detention,  
9 NPR (Aug. 16, 2023, 5:01 AM) (reporting on the “‘negligent’ medical care (including  
10 mental health care), ‘unsafe and filthy’ conditions, racist abuse of detainees,  
11 inappropriate pepper-spraying of mentally ill detainees and other problems that, in some  
12 cases, contributed to detainee deaths” contained in inspection reports prepared by  
13 experts from the Department of Homeland Security’s Office for Civil Rights and Civil  
14 Liberties after examining detention facilities between 2017 and 2019).

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18 33. The Mathews test for procedural due process claims balances: (1) the private interest  
19 threatened by governmental action; (2) the risk of erroneous deprivation of such interest  
20 and the value of additional or substitute safeguards; and (3) the government interest.  
21 Mathews v. Eldridge, 424 U.S. 319, 335 (1976); see also Sho v. Current or Acting Field  
22 Off. Dir., No. 1:21-CV-01812 TLN AC, 2023 WL 4014649, at \*3 (E.D. Cal. June 15,  
23 2023), report and recommendation adopted, No. 1:21-CV-1812-TLN-AC, 2023 WL  
24 4109421 (E.D. Cal. June 21, 2023) (applying Mathews factors to a habeas petitioner’s  
25 due process claims and collecting cases doing the same). Here, each factor weighs in  
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1 Petitioner’s favor, requiring this Court to promptly hold a hearing to evaluate whether  
2 the government can justify their ongoing detention.

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

10  
11  
12 35. Second, Petitioner will suffer the erroneous risk of deprivation of their liberty without  
13 an individualized evidentiary hearing. The risk of erroneous deprivation of their liberty  
14 is high, as they have been detained since September 2025, without any evaluation of  
15 whether the government can justify detention under their individualized circumstances.  
16 “The risk of an erroneous deprivation of liberty in the absence of a hearing before a  
17 neutral decisionmaker is substantial.” *Diouf*, 634 F.3d at 1092. Conversely, “the  
18 probable value of additional procedural safeguards—an individualized evaluation of the  
19 justification for his detention—is high, because Respondents have provided virtually no  
20 procedural safeguards at all.” *Jimenez v. Wolf*, No. 19-cv-07996-NC, 2020 WL 510347,  
21 (N.D. Cal. Jan. 30, 2020) (granting habeas petition for person who had been detained  
22 for one year without a bond hearing).

23  
24  
25 36. Third, the government’s interest is very low in continuing to detain Petitioner without  
26 providing any neutral review. See *Mathews*, 424 U.S. at 335. The specific interest at  
27 stake here is not the government’s ability to continue to detain Petitioner, but rather the  
28

1 government's ability to continue to detain them for months on end without any  
2 individualized review. See *Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 964 (N.D.  
3 Cal. 2019); *Henriquez v. Garland*, No. 5:22-CV-00869-EJD, 2022 WL 2132919, at 5  
4 (N.D. Cal. June 14, 2022). The cost of providing an individualized inquiry is minimal.  
5 See *Henriquez*, 2022 WL 2132919, at 5. The government has repeatedly conceded this  
6 fact. See *Lopez Reyes v. Bonnar*, 362 F. Supp. 3d 762, 777 (N.D. Cal. 2019); *Singh v.*  
7 *Barr*, 400 F. Supp. 3d 1005, 1021 (S.D. Cal. 2019); *Marroquin Ambriz*, 420 F. Supp. 3d  
8 at 964.  
9

10  
11 37. In sum, the Mathews factors establish that Petitioner is entitled to an evidentiary hearing  
12 before a neutral adjudicator. Unsurprisingly, courts applying these standards in this  
13 Circuit have repeatedly held that prolonged detention without a hearing before a neutral  
14 adjudicator violates procedural due process. See, e.g., *Romero Romero v. Wolf*, No. 20-  
15 CV-08031-TSH, 2021 WL 254435, at 2, 5 (N.D. Cal. Jan. 26, 2021) (*Rodriguez Diaz v.*  
16 *Garland*, 53 F.4th 1189 (9th Cir. 2022), does not disturb this result. In *Rodriguez Diaz*,  
17 the Ninth Circuit applied the Mathews test to hold that the detention of a noncitizen  
18 detained under a different detention statute, 8 U.S.C. § 1226(a), did not violate  
19 procedural due process. 53 F.4th at 1195. Unlike Sections 1225(b) and 1226(c), §  
20 1226(a) mandates that detained individuals receive an individualized bond hearing at  
21 the outset of detention and provides for further bond hearings upon a material change in  
22 circumstances. See 8 C.F.R. § 1003.19(e). The panel's decision in *Rodriguez Diaz* was  
23 predicated on the immediate and ongoing availability of this administrative process  
24 under § 1226(a). 53.F.4th at 1202 ("Section 1226(a) and its implementing regulations  
25 provide extensive procedural protections that are unavailable under other detention  
26  
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1 provisions . . .”). Unlike the petitioner in Rodriguez Diaz, Petitioner has no statutory  
2 access to individualized review of his detention.

3 38. Alternatively, courts that apply a reasonableness test have considered four non-  
4 exhaustive factors in determining whether detention is reasonable. *German Santos v.*  
5 *Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 210-22 (3d Cir. 2020). The  
6 reasonableness inquiry is “highly fact specific.” *Id.* at 210. “The most important factor  
7 is the duration of detention.” *Id.* at 211; see also *Gonzalez v. Bonnar*, No. 18-CV-05321-  
8 JSC, 2019 WL 330906, at 1, 5 (N.D. Cal. Jan. 25, 2019). Duration is evaluated along  
9 with “all the other circumstances,” including (1) whether detention is likely to continue,  
10 (2) reasons for the delay, and (3) whether the conditions of confinement are  
11 meaningfully different from criminal punishment.  
12

13  
14 39. As noted, Petitioner has been detained for a substantial length of time, and Petitioner’s  
15 detention is likely to continue as Petitioner asserts their right to seek immigration relief.  
16 Noncitizens should not be punished for pursuing “legitimate proceedings” to seek relief.  
17 Moreover, Petitioner’s confinement and experiences at a facility operated by a private,  
18 for-profit prison contractor, demonstrate that their conditions of confinement are not  
19 meaningfully different from those of criminal punishment.  
20

21 **D. At Any Hearing, The Government Must Justify Ongoing Detention By**  
22 **Clear and Convincing Evidence.**  
23

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

3  
4 41. To justify prolonged immigration detention, the government must bear the burden of  
5 proof by clear and convincing evidence that the noncitizen is a danger or flight risk. See  
6 *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011); *Aleman Gonzalez v. Barr*, 955  
7 F.3d 762, 781 (9th Cir. 2020), rev’d on other grounds by *Garland v. Aleman Gonzalez*,  
8 142 S. Ct. 2057, 213 L. Ed. 2d 102 (2022) (“Jennings’s rejection of layering [the clear  
9 and convincing burden of proof standard] onto § 1226(a) as a matter of statutory  
10 construction cannot . . . undercut our constitutional due process holding in *Singh*.”);

11  
12 42. Where the Supreme Court has permitted civil detention in other contexts, it has relied  
13 on the fact that the Government bore the burden of proof by at least clear and convincing  
14 evidence. See *United States v. Salerno*, 481 U.S. 739, 750, 752 (1987) (upholding pre-  
15 trial detention after a “full-blown adversary hearing” requiring “clear and convincing  
16 evidence” and “a neutral decisionmaker”); *Foucha v. Louisiana*, 504 U.S. 71, 81-83  
17 (1992) (striking down civil detention scheme that placed burden on the detainee);  
18 *Zadvydas*, 533 U.S. at 692 (finding post-final-order custody review procedures deficient  
19 because, inter alia, they placed burden on detainee).

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

15 44. Due process also requires consideration of alternatives to detention. The primary  
16 purpose of immigration detention is to ensure a noncitizen’s appearance during civil  
17 removal proceedings. Detention is not reasonably related to this purpose if there are  
18 alternative conditions of release that could mitigate risk of flight. See *Bell v. Wolfish*,  
19 441 U.S. 520, 538–39 (1979) (civil pretrial detention may be unconstitutionally punitive  
20 if it is excessive in relation to its legitimate purpose). ICE’s alternatives to detention  
21 program—the Intensive Supervision Appearance Program—has achieved extraordinary  
22 success in ensuring appearance at removal proceedings, reaching compliance rates close  
23 to 100 percent. *Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017) (observing  
24 that ISAP “resulted in a 99% attendance rate at all EOIR hearings and a 95% attendance  
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1 rate at final hearings”). Thus, alternatives to detention must be considered in  
2 determining whether prolonged incarceration is warranted.

3 45. Due process likewise requires consideration of a noncitizen’s ability to pay a bond.

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

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19 **VIII. CLAIMS FOR RELIEF FIRST CLAIM FOR RELIEF**

20 **FIRST CLAIM FOR RELIEF**

21 **Violation of the Fifth Amendment**

22 46. Petitioner re-alleges and incorporates by reference the paragraphs 1 through 45.

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

26 48. The Due Process Clause requires the government to establish, at an individualized  
27 hearing before a neutral decisionmaker, that Petitioner’s prolonged detention is justified  
28

1 by clear and convincing evidence of flight risk or danger, even after consideration of  
2 whether alternatives to detention could sufficiently mitigate that risk.

3 49. Petitioner's detention has become prolonged as she has been detained for Eight months  
4 and faces months, if not years, of continued detention while her case is adjudicated.

5 50. Petitioner's ongoing prolonged detention without an individualized bond hearing  
6 violates the Due Process Clause.

7  
8 **IX. PRAYER FOR RELIEF**

9 WHEREFORE, Petitioner respectfully prays this Court grant the following relief:

- 10 (i) Assume jurisdiction over this matter;
- 11 (ii) Grant the Order to Show Cause;
- 12 (iii) Declare that Petitioner's ongoing prolonged detention violates 8 U.S.C.  
13 § 1226(a) and the Due Process Clause of the Fifth Amendment;
- 14 (iv) Issue a Writ of Habeas Corpus and order Respondents to immediately  
15 release Petitioner from DHS custody under reasonable conditions, and  
16 enjoin Respondents from re-arresting her without a pre-deprivation  
17 hearing before this Court;
- 18 (v) Alternatively, order that Petitioner be released within fourteen (14) days  
19 unless Respondents provide a hearing before a neutral arbiter at which,  
20 to justify continued detention, the government must establish by clear  
21 and convincing evidence that Petitioner presents a danger to the  
22 community or a flight risk, and must address why available conditions  
23 of supervision cannot mitigate any such risk; and further order that: (a)  
24 if the government fails to meet this burden, the neutral arbiter shall order  
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1 Petitioner's release on appropriate conditions of supervision, taking into  
2 account Petitioner's ability to pay a bond; or (b) if the government meets  
3 this burden, the neutral arbiter shall issue a reasoned decision explaining  
4 why the government has met its burden of proof and why alternatives to  
5 detention are inadequate;  
6

7 (vi) Enjoin Respondents from subjecting Petitioner to further harm during  
8 the pendency of this litigation and the underlying immigration  
9 proceedings, including, but not limited to, transferring him to a distant  
10 facility away from counsel or placing him in solitary confinement;  
11

12 (vii) Award reasonable costs and attorneys' fees pursuant to the Equal Access  
13 to Justice Act, 28 U.S.C. § 2412, or on any other basis authorized by law;  
14 and  
15

16 (viii) Grant such other and further relief as the Court deems just and proper.

17 Respectfully Submitted this May 05, 2026  
18

19 *Sajjad Hussain*

20 /s/Sajjad Hussain, Esq.  
21 Indus Pacific Law Office, Law Corp  
22 Attorney for Petitioner  
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