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CLERK U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BY llb
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1 Name/Nombre: Salvador Flores Gonzalez

2 A Number/Numero de A: [REDACTED]

3 Address/Direccion: 611 Frontage Rd
4 McFarland, CA 93250

5 **PRO SE**

6
7 **UNITED STATES DISTRICT COURT**
8 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

9
10 Salvador Flores Gonzalez

11
12 A #: [REDACTED] [Your name/nombre]

13 Petitioner,

14 V.

15 Warden of the Golden State Annex

16 Detention Facility; **TODD BLANCHE**, Attorney

17 General for the United States of America;

18 **MARKWAYNE MULLIN**, Secretary of the

19 Department of Homeland Security; **DAVID**

20 **VENTURELLA**, Acting Director of Immigration

21 and Customs Enforcement; **ICE/ERO**, Office of

22 Bureau of Immigration and Customs Enforcement

23
24 Respondents,

1:26-cv-0150-JLT-EPG

Case No. _____
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Petition for Writ of Habeas Corpus

Pursuant to 28 U.S.C. § 2241

25
26 Petitioner respectfully petitions this Honorable Court for Writ of Habeas Corpus to
27 remedy Petitioner's unlawful detention by Respondents, as follows:
28

INTRODUCTION

1. Petitioner¹ is currently detained by immigration and customs Enforcement (“ICE”) at the Golden State Annex *[escriba el nombre del centro de detencion donde esta detenido]* detention center pending removal proceedings.

2. Petitioner has been detained in immigration custody for over 1 Months *[escriba el numero de meses que ha estado detenido]* months even though no neutral desicionmaker 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 or flight risk violates the Due Process Clause of the Firth Amendment.

4. Petitioner therefore respectfully request 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’s 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 bond.

5. Alternatively, Petitioner request 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 present a risk or 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 bond.

¹ Petitioner respectfully request 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; 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 Golden State Annex
[escriba el nombre del centro de detencion donde esta 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 because this is the district in which Petitioner is confined. *See Doe v. Garland*, 109 F.4th 1188, 1197-99 (9th Cir. 2024).

REQUIREMENTS OF 28 U.S.C. § 2243

10. The court must grant the petition for writ of habeas corpus or issue an order to show cause (“OSC”) to Respondents “forthwith,” unless Petitioner is not entitled to relief. 28 U.S.C § 2243. if the Court issues an OSC, it must require Respondents to file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis added).

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

expeditious determination of petitions).

PARTIES

12. Petitioner is a noncitizen currently detained by Respondents pending ongoing removal proceedings. Petitioner was born in Mexico [country of birth/pais de nacimiento]

13. Respondent Warden of the Golden State Annex is Petitioner's immediate custodian at the Facility where Petitioner is detained. See *Doe*, 108 F.4th at 1194-97.

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

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

16. Respondent Acting or Current Field Office Director of the San Francisco ICE Field Office is responsible for the San Francisco Field Office of ICE with administrative jurisdiction over Petitioner's case. They are legal custodian of Petitioner and are named in their official capacity.

17. Respondent Acting or Current Director of ICE is responsible for ICE's policies, practices, and procedures, including those relating to the detention of immigrants. They are a legal custodian of Petitioner and are named in their official capacity.

STATEMENT OF FACTS

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

Pending Applicant Assylum
Valid workers permit.

19. Petitioner has been detained in DHS custody since 7/26/26 [Date/fecha]

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

21. The immigration Court lacks jurisdiction and authority to provide Petitioner with a bond hearing to determine whether Petitioner's detention is justified. See 8 U.S.C. §§ 1225(b); 1226(c). There is no statutory or regulatory pathway for Petitioner to seek a bond hearing before a neutral decisionmaker.

22. Absent intervention by this court, petitioner cannot and will be provided with a bond hearing by a neutral decisionmaker to assess the propriety of Petitioner's continued detention.

23. Additional facts to support Petitioner's entitlement to relief are

Your honor, thank you Ford hearing my case. I've been in the U.S for 2 plus years. I have two kids in Mexico who depend on me and two here in the U.S. One of whom is a U.S Citizen. My wife and I both entered the U.S Seeking assylum from our Country of birth Mexico. We both have valid work permits awaiting our assylum case. My only mistake was not making sure my mobile phone was working properly for my online checkings for my pending assylum case. I was detained checking in to ICE and charged

1 with missing 8 online check ins. I have
 2 no criminal record. I fear to go back
 3 to my country and my wife staying here
 4 on her own with our two children. I am
 5 the main provider for my children and
 6 wife. They will suffer financially on top
 7 of emotionally. All I ask is for a second
 8 chance and I promise I will make sure
 9 my online check ins work every time.
 10 I will not run, or danger to the
 11 community. I always arrive to all my
 12 appointments. Thank you your honor in
 13 advance! Have a blessed day.

23 LEGAL BACKGROUND

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

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

13 26. Due process requires that the government provide bond hearings to noncitizens
 14 facing prolonged detention. “The Due Process Clause foresees eligibility for bail as part of due
 15 process” because “[b]ail is basic to our system of law.” *Jennings*, 138 S. Ct. at 862 (Breyer, J.,
 16 dissenting) (internal quotation marks omitted). While the Supreme Court upheld the mandatory
 17 detention of a noncitizen under Section 1226(c) in *Demore*, it did so based on the petitioner’s
 18 concession of deportability and the Court’s understanding at the time that such detentions are
 19 typically “brief.” *Demore*, 538 U.S. at 522 n.6, 528. Where a noncitizen has been detained for a
 20 prolonged period or is pursuing a substantial defense to removal or claim to relief, due process
 21 requires an individualized determination that such a significant deprivation of liberty is
 22 warranted. *Id.* at 532 (Kennedy, J., concurring) (“[I]ndividualized determination as to his risk of
 23 flight and dangerousness” may be warranted “if the continued detention became unreasonable or
 24 unjustified”); *see also Jackson v. Indiana*, 406 U.S. 715, 733 (1972) (holding that detention
 25 beyond the “initial commitment” requires additional safeguards); *McNeil v. Dir., Patuxent Inst.*,
 26 407 U.S. 245, 249-50 (1972) (holding that “lesser safeguards may be appropriate” for “short-
 27 term confinement”); *Hutto v. Finney*, 437 U.S. 678, 685-86 (1978) (holding that, in the Eighth
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1 Amendment context, “the length of confinement cannot be ignored in deciding whether [a]
 2 confinement meets constitutional standards”); *Reid v. Donelan*, 17 F.4th 1, 7 (1st Cir.
 3 2021) (holding that “the Due Process Clause imposes some form of reasonableness limitation
 4 upon the duration of detention” under section 1226(c)) (internal quotation marks omitted).

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

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

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

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

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

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

19 31. Petitioner faces severe hardships while detained by ICE. Petitioner is held in a
 20 locked down facility, with limited freedom of movement and access to Petitioner's family or
 21 support network: "[T]he circumstances of their detention are similar, so far as we can tell,
 22 to those in many prisons and jails." *Jennings*, 138 S. Ct. at 861 (Breyer, J., dissenting); *accord*
 23 *Chavez-Alvarez v. Warden York Cnty. Prison*, 783 F.3d 469, 478 (3d Cir. 2015); *Ngo v. INS*, 192
 24 F.3d 390, 397-98 (3d Cir. 1999); *Sopo v. U.S. Att'y Gen.*, 825 F.3d 1199, 1218, 1221 (11th Cir.
 25 2016). "And in some cases the conditions of their confinement are inappropriately poor"
 26 including, for example, "invasive procedures, substandard care, and mistreatment, *e.g.*,
 27 indiscriminate strip searches, long waits for medical care and hygiene products, and, in the case
 28

1 of one detainee, a multiday lock down for sharing a cup of coffee with another detainee.”
 2 *Jennings*, 138 S. Ct. at 861 (Breyer, J., dissenting) (citing Press Release, Off. of Inspector Gen.,
 3 Dept. of Homeland Sec., *DHS OIG Inspection Cites Concerns With Detainee Treatment and*
 4 *Care at ICE Detention Facilities* (Dec. 14, 2017)); see also Tom Dreisbach, *Government's own*
 5 *experts found 'barbaric' and 'negligent' conditions in ICE detention*, NPR (Aug. 16, 2023, 5:01
 6 AM) (reporting on the “‘negligent’ medical care (including mental health care), ‘unsafe and
 7 filthy’ conditions, racist abuse of detainees, inappropriate pepper-spraying of mentally ill
 8 detainees and other problems that, in some cases, contributed to detainee deaths” contained in
 9 inspection reports prepared by experts from the Department of Homeland Security’s Office for
 10 Civil Rights and Civil Liberties after examining detention facilities between 2017 and 2019).
 11 Individuals at Golden State Annex Detention Facility have described receiving food
 12 contaminated with insects (including cockroaches, flies, and spiders), hair, and other foreign
 13 objects. See California Collaborative for Immigrant Justice, *Starving for Justice: The Denial of*
 14 *Proper Nutrition in Immigration Detention*, at p. 7 (April 2022), available at
 15 https://www.ccijjustice.org/files/ugd/733055_c43b1cbbdda341b894045940622a6dc3.pdf. At
 16 Mesa Verde Detention Facility, over 80% of detained individuals who responded to one survey
 17 said they had received expired food. *Id.*

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

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

7 34. Second, Petitioner will suffer the erroneous risk of deprivation of their liberty
 8 without an individualized evidentiary hearing. The risk of erroneous deprivation of their liberty
 9 is high, as they have been detained since 7/26/26 [escriba el mes y año en
 10 que comenzó su detención por ICE] without any evaluation of whether the government can
 11 justify detention under their individualized circumstances. “[T]he risk of an erroneous
 12 deprivation of liberty in the absence of a hearing before a neutral decisionmaker is substantial.”
 13 *Diouf*, 634 F.3d at 1092. Conversely, “the probable value of additional procedural safeguards—
 14 an individualized evaluation of the justification for his detention—is high, because Respondents
 15 have provided virtually no procedural safeguards at all.” *Jimenez v. Wolf*, No. 19-cv-07996-NC,
 16 2020 WL 510347, *3 (N.D. Cal. Jan. 30, 2020) (granting habeas petition for person who had
 17 been detained for one year without a bond hearing).

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

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

15 37. *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022), does not disturb this
 16 result. In *Rodriguez Diaz*, the Ninth Circuit applied the *Mathews* test to hold that the detention of
 17 a noncitizen detained under a different detention statute, 8 U.S.C. § 1226(a), did not violate
 18 procedural due process. 53 F.4th at 1195. Unlike Sections 1225(b) and 1226(c), § 1226(a)
 19 mandates that detained individuals receive an individualized bond hearing at the outset of
 20 detention and provides for further bond hearings upon a material change in circumstances. *See* 8
 21 C.F.R. § 1003.19(e). The panel's decision in *Rodriguez Diaz* was predicated on the immediate
 22 and ongoing availability of this administrative process under § 1226(a). 53 F.4th at 1202
 23 ("Section 1226(a) and its implementing regulations provide extensive procedural protections that
 24 are unavailable under other detention provisions . . ."). Unlike the petitioner in *Rodriguez Diaz*,
 25 Petitioner has no statutory access to individualized review of his detention.

26 38. Alternatively, courts that apply a reasonableness test have considered four non-
 27 exhaustive factors in determining whether detention is reasonable. *German Santos v. Warden*
 28

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

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

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

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

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

24 42. Where the Supreme Court has permitted civil detention in other contexts, it has
 25 relied on the fact that the Government bore the burden of proof by at least clear and convincing
 26 evidence. See *United States v. Salerno*, 481 U.S. 739, 750, 752 (1987) (upholding pre-trial
 27 detention after a "full-blown adversary hearing" requiring "clear and convincing evidence" and
 28

1 "a neutral decisionmaker"); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (striking down
 2 civil detention scheme that placed burden on the detainee); *Zadvydas*, 533 U.S. at 692 (finding
 3 post-final-order custody review procedures deficient because, *inter alia*, they placed burden on
 4 detainee).

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

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

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

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

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

19 CLAIM FOR RELIEF

20 VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO 21 THE U.S. CONSTITUTION

22 46. Petitioner re-alleges and incorporates by reference the paragraphs above.

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

25 48. To justify Petitioner’s ongoing prolonged detention, due process requires that the
 26 government establish, at an individualized hearing before a neutral decisionmaker, that
 27 Petitioner’s detention is justified by clear and convincing evidence of flight risk or danger,
 28

1 taking into account whether alternatives to detention could sufficiently mitigate that risk.
2 49. For these reasons, Petitioner's ongoing prolonged detention without a hearing
3 violates due process.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Petitioner respectfully requests that this Court:

- 6 1) Assume jurisdiction over this matter;
 - 7 2) Issue a Writ of Habeas Corpus, hold a hearing before this Court if warranted,
8 determine that Petitioner's detention is not justified because the government has
9 not established by clear and convincing evidence that Petitioner presents a risk of
10 flight or danger in light of available alternatives to detention, and order
11 Petitioner's release (with appropriate conditions of supervision if necessary),
12 taking into account Petitioner's ability to pay a bond;
 - 13 3) In the alternative, issue a Writ of Habeas Corpus and order Petitioner's release
14 within 30 days unless Respondents schedule a hearing before an immigration
15 judge where: (1) to continue detention, the government must establish by clear
16 and convincing evidence that Petitioner presents a risk of flight or danger, even
17 after consideration of alternatives to detention that could mitigate any risk that
18 Petitioner's release would present; and (2) if the government cannot meet its
19 burden, the immigration judge order Petitioner's release on appropriate
20 conditions of supervision, taking into account Petitioner's ability to pay a bond;
 - 21 4) Issue a declaration that Petitioner's ongoing prolonged detention violates the Due
22 Process Clause of the Fifth Amendment;
 - 23 5) Award Petitioner his costs and reasonable attorneys' fees in this action as
24 provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412; and
25 6) Grant such further relief as the Court deems just and proper.
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7/29/24
Date [Fecha]

Salvador Flores Gonzalez
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
- ☐ California City Detention Facility, 22844 Virginia Boulevard, California City, CA 93505