Guide to File a Pro Se Habeas Petition for People Detained by ICE in the Golden State Annex and Mesa Verde Detention Facilities

I. What is the purpose of this guide?

This guide is designed to assist people detained by Immigration and Customs Enforcement (ICE) who do not have a lawyer to complete and file a "petition for writ of habeas corpus." "Habeas corpus" is a right protected by the Constitution and by federal statute that allows individuals to challenge their detention or imprisonment as unlawful.[1]

If you answer "Yes" to the following three questions, this guide is designed to assist you to challenge your detention by ICE and to request a bond hearing in front of an Immigration Judge:

1. Have you been detained without a bond hearing for more than six months?

2. Are your removal proceedings are still pending before the Immigration Court, Board of Immigration Appeals or a United States Circuit Court of Appeals?;

3. Has the Immigration Judge told you or ruled that you are ineligible for a bond hearing, or that the Immigration Judge does not have jurisdiction to grant you bond,
   (a) because of your criminal history,
   (b) because you came to the United States seeking asylum and have been classified as an "arriving alien" on your Notice to Appear, or,
   (c) because you received an "expedited removal order" and/or are not bond eligible due to a case called *Matter of M-S-*?

If you answered "Yes" to each of these three questions AND you have not had a bond hearing in Immigration Court in the last six months, you may be able to file a habeas petition using this guide to request a bond hearing in front of an Immigration Judge.

Please note that unlike the things you file in immigration court, habeas proceedings and decisions are NOT confidential. Information you put into the habeas petition may become publicly accessible.

II. What does "Pro Se" mean?

By using this guide, you will be proceeding as a *pro se* petitioner. "Pro se" is Latin for "in one's own behalf." This means that you will be filing this petition in court on your own without the

[1] U.S. Const. art. I, § 9, cl. 2 ("The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it."); 28 U.S.C. § 2241.

assistance of a lawyer. Most habeas petitions are filed *pro se* because there is no constitutional right to a lawyer in a habeas case. This guide is designed to help you file a petition for habeas corpus without the assistance of an attorney.

III. In which court do I file?

This *pro se* guide is intended for individuals detained in the Mesa Verde and Golden State Annex detention facilities. These detention facilities are located in Bakersfield, CA and McFarland, CA, respectively, and fall under the jurisdiction of the United States District Court for the Eastern District of California. Therefore, you will file your petition for habeas corpus in federal court in the United States District Court for the Eastern District of California.

IV. How do I file a habeas petition?

- ☐ Fill out the attached **Petition for Writ of Habeas Corpus**. You must complete it in English. You must sign and date the petition.

- ☐ If you would like to ask the Court to appoint a free lawyer for you, fill out the attached **Motion for Appointment of Counsel**. But, you should be aware that in most cases, the Court will decide not to appoint you a free lawyer.

- ☐ Prepare the filing fee of $5.00 (cash, money order, or check made out to "Clerk, U.S. District Court"). If you cannot pay, see the **Instructions for Filing and Application to Proceed in Forma Pauperis**, attached.

- ☐ If you want to be considered for a free lawyer, you must apply to be "in forma pauperis" instead of paying the $5.00. "In forma pauperis" is Latin and means you are financially unable to pay the costs and fees associated with a lawsuit.

- ☐ Mail the originals plus two copies of everything, and the filing fee (unless you have filed an application to proceed *in forma pauperis*), to the address below. (Unlike in some other legal matters such as immigration court, you are not required to mail a paper copy of your filings to opposing counsel for a habeas petition in the Eastern District of California. Instead, the court clerk will serve the government for you)

  Office of the Clerk
  United States District Court for the Eastern District of California
  Robert E. Coyle United States Courthouse
  2500 Tulare Street, 1st Floor, Room 1501
  Fresno, CA 93721

- ☐ Keep one extra copy of the entire filing for your records.

V. Is there any information I should know to fill out the habeas petition?

a. Provide detailed information to the best of your ability and confirm that all your information is correct.

b. On the caption page, after "Warden of the", please insert whether you are currently detained at "Golden State Annex" or "Mesa Verde"

c. In **paragraphs 1, 6**, and **13** please insert whether you are currently detained at "Golden State Annex" or "Mesa Verde."

d. In **paragraph 2**, insert how many months you have been detained by ICE without a bond hearing (include time you have been detained at ICE detention facilities other than Mesa Verde or Golden State Annex).
   - For example, if you were detained in Texas for 3 months, Golden State Annex for 1 month, and Mesa Verde for 9 months, you have been detained by ICE for 13 months. You would write "13" in the blank.

e. In **paragraph 18**, briefly describe the claims you are pursuing in your immigration (removal) proceedings. Include all claims presented, such as: applications for asylum, withholding of removal, Convention Against Torture, cancellation of removal, adjustment of status, termination of proceedings, U visa, and T visa.

f. In **paragraphs 19 and 34**, write the month and year ICE began detaining you.

g. In **paragraph 23**, additional facts to describe could include:
   - Whether you have attempted to request a bond hearing from the Immigration Court, how many times you requested a bond hearing, and the response(s) you received.
   - Negative or abusive conditions of your detention (for example, inadequate medical care, expired food, insects, unsanitary bathrooms, abuse, solitary confinement, etc.).
   - Any mental health or physical health conditions you have that are caused or made worse by detention.
   - Total time you have been incarcerated (jail/prison) and detained (ICE).
   - If you have criminal convictions ICE is already aware of, you can choose to *briefly* describe them, and also describe your rehabilitation and remorse.
   - The status of your immigration case and how long you believe the case will take to be resolved, including appeals.
   - Whether there have been any delays in your immigration case, such as continuances, how long each continuance lasted, and who requested the continuances (you, your attorney, the government, or the judge).

- Why you hope to be released (What will you do when you are released? Why is it important to you to be free? Who will you spend time with (family, friends, etc.)?).
- Your positive equities (for example, how long you have been in the U.S., family ties to the U.S., work history, good behavior, any training/classes you participated in while incarcerated or detained, evidence of rehabilitation, etc.).
- If true, your willingness to accept electronic monitoring or other alternatives to detention if you are released.
- Connections you have to family or the community that would help you if you are released.
- Plans you have if you are released (such as work, housing, etc.) to demonstrate you have a plan to re-enter society in a positive way.
- If you will have to check in with a parole officer after release, state your intention to do so and include the address where you will go for the check-in, if known.

Use additional pages to write more facts, if needed.

h. On **page 18**, write in the date, your name, and your signature.

i. Also on **page 18**, check the box for the facility where you are detained.

VI. What happens next?

Your case will be assigned to a magistrate judge. A magistrate judge is a specially appointed judge who has the authority to handle certain federal cases, if the parties agree. You and the government will have the opportunity to "consent to" or "decline" the magistrate judge. If you both "consent," the magistrate judge will be in charge of your case.

If either you or the government "declines," the magistrate judge will make a "recommendation" about your case that will be reviewed and ultimately decided by a district judge. If you or the government disagree with the magistrate judge's "recommendation," both sides will have the opportunity to file arguments to persuade the district judge to make a different decision.

The government (ICE) will have a chance to respond to your petition. After you receive the government's response (also called a "Return"), you can file an optional "reply" (also called a "Traverse").

If you are moved to a different detention facility while your habeas petition is pending, be sure to inform the habeas Court. The judge should keep your case, even if ICE transfers you somewhere else.

The judge will likely take several months to make a decision. If your petition is granted, the judge will probably order the government to provide you a bond hearing before an Immigration Judge within a certain period of time. In rare situations, the habeas judge may directly order your release.

This Pro Se Habeas Packet has been created by immigration and immigrants' rights advocates in northern California, including the ACLU of Northern California (ACLU NorCal), Asian Americans Advancing Justice - Asian Law Caucus (ALC), and the California Collaborative for Immigrant Justice (CCIJ). The guide is for informational purposes only and does not contain legal advice. It was last updated in November 2024.

Name / Nombre:

A Number / Número A:

Address / Dirección:

PRO SE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

_____

_____
[Full Name / Nombre Completo]

(A# _____-_____-_____)

Petitioner,

v.

Warden of the _____ Detention Facility, Current or Acting Field Office Director, San Francisco 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. _____

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[1] is currently detained by Immigration and Customs Enforcement ("ICE") at the _____ [*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 _____ [*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.

---

[1] 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-l-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 _____ [*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 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 requires expeditious determination of petitions).

PARTIES

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

13. Respondent Warden of the _____ [*escriba el nombre del centro de detención donde está detenido*] Detention Facility 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 a 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 named 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 a 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 los aplicaciones de alivio que usted esta presentando en su caso de deportacion]:

_____

_____

_____

19. Petitioner has been detained in DHS custody since _____ [*escriba el mes y año en que comenzó su detención por ICE*].

20. Petitioner has not been provided a bond hearing before a neutral decisionmaker 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 not be provided with a bond hearing by a neutral decisionmaker to assess the propriety of Petitioner's continued detention.

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

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

LEGAL BACKGROUND

24. "'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").

25. 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.

26. 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 such detentions 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.

27. 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").

28. 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 Supreme Court has found six months to be the limit of confinement for a criminal offense that a federal court may impose without the protection afforded by jury trial. *Cheff v. Schnackenberg*, 384 U.S. 373, 380 (1966) (plurality opinion). The Court has also looked to six months as a benchmark in other contexts involving civil detention. *See McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249, 250-52 (1972) (recognizing six months as an outer limit for confinement without

individualized inquiry for civil commitment). The Court has likewise recognized the need for bright line constitutional rules in other areas of law. *See Maryland v. Shatzer*, 559 U.S. 98, 110 (2010) (holding that 14 days must elapse following invocation of *Miranda* rights before re-interrogation is permitted); *Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 55-56 (1991) (holding that a probable cause hearing must take place within 48 hours of warrantless arrest).

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

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

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

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

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

32. The *Mathews* test for procedural due process claims balances: (1) the private interest threatened by governmental action; (2) the risk of erroneous deprivation of such interest and the value of additional or substitute safeguards; and (3) the government interest. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976); *see also Sho v. Current or Acting Field Off. Dir.*, No. 1:21-CV-01812 TLN AC, 2023 WL 4014649, at *3 (E.D. Cal. June 15, 2023), *report and recommendation adopted*, No. 1:21-CV-1812-TLN-AC, 2023 WL 4109421 (E.D. Cal. June 21, 2023) (applying *Mathews* factors to a habeas petitioner's due process claims and collecting cases doing the same). 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.

33. 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).

34. 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 _____ [*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).

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

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

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

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

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

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

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

40. 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.

41. 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*."); *Sho*, 2023 WL 4014649, at *5 (applying *Singh* and holding that the government shall bear the burden in a constitutionally required bond hearing to remedy detention under a different statutory provision); *Singh,* 2023 WL 5836048, at *9 (same); *Doe v. Garland*, No. 3:22-CV-03759-JD, 2023 WL 1934509, at *2 (N.D. Cal. Jan. 10, 2023) (same); *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).

42. 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 evidence. *See United States v. Salerno*, 481 U.S. 739, 750, 752 (1987) (upholding pre-trial detention after a "full-blown adversary hearing" requiring "clear and convincing evidence" and

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

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

D. Due Process Requires Consideration Of Alternatives To Detention.

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

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

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

CLAIM FOR RELIEF

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

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

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

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

taking into account whether alternatives to detention could sufficiently mitigate that risk.

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

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1) Assume jurisdiction over this matter;

2) Issue a Writ of Habeas Corpus, hold a hearing before this Court if warranted, 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;

3) In the alternative, issue a Writ of Habeas Corpus and order Petitioner's release within 30 days unless Respondents schedule a hearing before an immigration judge 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 immigration judge order Petitioner's release on appropriate conditions of supervision, taking into account Petitioner's ability to pay a bond;

4) Issue a declaration that Petitioner's ongoing prolonged detention violates the Due Process Clause of the Fifth Amendment;

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

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

_____	_____
Date [*Fecha*]	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

Name / Nombre: _____

A Number / Número A: _____

Address / Dirección: _____

_____

PRO SE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

_____

_____

[Full Name / Nombre Completo]

Petitioner,

v.

Warden of the _____ Detention Facility, Current or Acting Field Office Director, San Francisco 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. _____

Motion for Appointment of Counsel Pursuant to 18 U.S.C. § 3006A

Petitioner [your name / *su nombre*] _____ has filed a petition for writ of habeas corpus under 28 U.S.C. § 2241 challenging Petitioner's indefinite detention by Respondents. Petitioner was detained by Immigration and Customs

Enforcement (ICE) on or about [date / *el mes y año en que comenzó su detención por ICE*] _____. Petitioner has remained in ICE custody since that date. Petitioner's removal proceedings remain pending.

The concurrently filed petition for writ of habeas corpus sets forth Petitioner's eligibility for a writ of habeas corpus ordering Petitioner's release.

Petitioner moves the Court to appoint counsel to represent Petitioner in this case. The Court may appoint counsel in a habeas action when the "interests of justices so require." 18 U.S.C. § 3006A(a)(2)(B). Here, Petitioner has a strong chance of success on the merits as explained in the concurrently filed petition for writ of habeas corpus. However, given the complexity of the law on immigration detention and Petitioner's status as a detained immigrant, Petitioner would have great difficulty presenting the case without the assistance of counsel. For these reasons, Petitioner respectfully requests that the Court appoint counsel.

_____ _____

Date [*Fecha*] Printed Name [*Nombre Impreso*]

_____

Signature [*Firma*]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

INSTRUCTIONS FOR FILING AN APPLICATION TO PROCEED IN FORMA PAUPERIS BY A PRISONER UNDER 28 U.S.C. § 1915

INSTRUCCIONES PARA UNA APLICACION PARA PRISIONERO INDIGENTE

You must submit to the court a completed Prisoner's Application to Proceed In Forma Pauperis if you are unable to pay the entire filing fee and/or if you are asking to be appointed a free attorney. Your application must include copies of the prisoner trust account statement showing transactions for the last six months and a certificate of funds in prisoner's account, signed by an authorized officer of the institution. Please write your answers in English.

*Necesita entregar al Tribunal una Aplicación Para Prisionero Indigente (**Prisoner's Application to Proceed In Forma Pauperis**) si no puede pagar la tarifa y/o está aplicando por un abogado gratuito. La aplicación necesita incluir una copia del estado de cuenta de su cuenta de prisionero (commissary) y ser firmado por un oficial del centro de detención. Por favor escriba sus respuestas en inglés.*

Habeas Actions

The fee for filing a petition for a writ of habeas corpus is $5 ($5 filing fee plus $0 administrative fee). If you are granted leave to proceed in forma pauperis, you will not be required to pay any portion of this fee. If you are not granted leave to proceed in forma pauperis, you must pay the fee in one payment and not in installments.

La tarifa para entregar una petición Habeas es $5. Si su Aplicación Para Prisionero Indigente es aprobada, no necesitará pagar la tarifa. Si su Aplicación Para Prisionero Indigente es negada, necesitará pagar la tarifa.

Name / Nombre: _____

A Number / Número A: _____

Address / Dirección: _____

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

_____

_____
[Full Name / Nombre Completo]

Petitioner,

v.

Warden of the _____ Detention Facility, Current or Acting Field Office Director, San Francisco 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. _____

Prisoner's Application and Declaration to Proceed *In Forma Pauperis*

I, [name / *su nombre*] _____, declare under penalty of perjury that I am the plaintiff in this case; I believe I am entitled to relief; and I am unable to pay the costs of this proceeding or give security thereof.

In support of this application, I provide true, correct, and complete responses to all of the following questions:

1. Are you presently employed in detention? ☐ YES ☐ NO

(*¿Está empleado actualmente en detención?*)

If your answer is "yes":

(*Si tu respuesta es "sí"*)

Number of hours you work per week: _____ Hourly rate of pay: _____

(*Número de horas que trabaja por semana*) (*Tarifa de pago por hora*)

2. For the last twelve (12) months, list the amount of money you have received from any of the following sources *(Durante los últimos doce (12) meses, indique la cantidad de dinero que ha recibido de cualquiera de las siguientes fuentes)*:

a. Business, profession, or self-employment $_____

(*Negocio, profesión, o trabajo por cuenta propia*)

b. Income from rent, interest, or dividends $_____

(*Ingresos por alquiler, intereses, o dividendos*)

c. Pensions, annuities, or life insurance payments $_____

(*Pensiones, anualidades, o pagos de seguros de vida*)

d. Disability, Social Security, or other government source $_____

(*Incapacidad, Seguro Social, u otra fuente gubernamental*)

e. Gifts or inheritances $_____

(*Regalos o herencias*)

f. Describe any other source of income (*Describa cualquier otra fuente de ingresos*):

_____ $_____

3. List the amount for each of the following (include detention center account funds) (*Indique la cantidad de cada uno de los siguientes (incluya los fondos de la cuenta del centro de detención*)):

Cash on hand (*Dinero en mano*): $_____

Checking account (*Cuenta de cheques*): $_____

Savings account (*Cuenta de ahorros*): $_____

4. Do you own or have any interest in real estate, stocks, bonds, notes, retirement plans, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? (*¿Es usted propietario o tiene algún interés en bienes raíces, acciones, bonos, pagarés, planes de jubilación, automóviles u otras propiedades valiosas (excluyendo ropa y muebles comunes para el hogar)?*)

☐ YES ☐ NO

If the answer is "yes," describe the property and state its approximate value (*Si la respuesta es "sí", describa la propiedad e indique el valor aproximado*):

_____ Approx. value: _____

_____ Approx. value: _____

5. Do you have any other assets? (*¿Tiene algún otro activo?*) ☐ YES ☐ NO

If the answer is "yes," list the asset(s) and the approximate value (*Si la respuesta es "sí", indique los activos y el valor aproximado*):

_____ Approx. value: _____

_____ Approx. value: _____

6. Does anyone depend on you for financial support? (*¿Alguien depende de usted para su apoyo financiero?*) ☐ YES ☐ NO

If the answer is "yes," state their relationship to you, and indicate how much you contribute toward their support each month. Use initials (not names) to refer to minor children (*Si la respuesta es "sí", indique su relación con usted e indique cuánto contribuye a su apoyo cada mes. Utilice iniciales (no nombres) para referirse a niños menores de edad*).

_____ Amount per month: $_____

_____ Amount per month: $_____

_____ Amount per month: $_____

_____ Amount per month: $_____

This form must be dated and signed below for the court to consider your application.

(*Este formulario debe estar fechado y firmado a continuación para que el tribunal considere su solicitud.*)

I hereby authorize the detention center having custody of me to withdraw from my trust account and pay to the court the initial partial filing fee and any installment payments required by the court, in accordance with 28 U.S.C. § 1915(b)(2).

(*Por la presente autorizo al centro de detención que tiene mi custodia a retirar dinero de mi cuenta fiduciaria y pagar al tribunal la tarifa de presentación parcial inicial y cualquier pago a plazos requerido por el tribunal, de conformidad con 28 U.S.C. § 1915(b)(2).*)

_____ _____

Date [*Fecha*] Printed Name [*Nombre Impreso*]

_____

A Number [*Número A*]

_____

Signature [*Firma*]

CERTIFICATE OF FUNDS IN DETAINED PERSON'S ACCOUNT

(*to be completed by authorized officer/ para ser completado por el/la official autorizado/a*)

I certify that attached hereto is a true and correct copy of the detained person's trust account statement showing the transactions of [*detained person's name*] _____ _____ for the last six (6) months at [*name of ICE detention center*] _____, where he or she is confined.

_____
Date [Fecha]

_____
Officer's Printed Name [*Nombre Impreso del/de la Oficial*]

_____
Signature of Authorized Officer [*Firma del/de la Oficial Autorizado*]