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11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

13 PRINCE PETERS,

14 Petitioner,

15 v.

16 MINGA WOFFORD, Facility Administrator of
17 Mesa Verde ICE Detention Facility,

18 Respondent.

Case No. 1:25-cv-00497

PETITIONER'S TRAVERSE

INTRODUCTION

Immigration and Customs Enforcement (“ICE”) has deprived Petitioner Prince Peters (“Mr. Peters”) of his physical liberty for over five years in harsh detention centers across the country. ECF 1 (“Petition”) at ¶¶ 22-26, 41, 59-64. ICE contractors have pepper-sprayed him, stripped him naked, hosed him down with cold water, and underfed him. *Id.* at ¶¶ 22, 23, 25. While confined, Mr. Peters has diligently sought to defend against deportation to Liberia, where his entire family was murdered in front of him, and from whence he fled to the United States as a teenager and lawful refugee over twenty years ago. He has endured the government’s extreme delay adjudicating his immigration case, including by waiting nearly two years for a single (favorable) Board of Immigration Appeals (“BIA”) decision. *Id.* at ¶¶ 11, 12, 16-21.

“It is undisputed that at some point, [civil] detention can ‘become excessively prolonged, and therefore punitive,’ resulting in a due process violation.” *United States v. Torres*, 995 F.3d 695, 708 (9th Cir. 2021) (quoting *United States v. Salerno*, 481 U.S. 739, 747 n.4 (1987)); *Doe v. Becerra*, 732 F. Supp. 3d 1071, 1080-1083 (N.D. Cal. 2024) (applying *Torres* to ICE detention and finding a noncitizen’s 30-month detention to violate due process). Mr. Peters is past that point. And furthermore, since he has never had a bond hearing, his detention violates procedural due process. *See Diep v. Wofford*, 1:24-cv-01238-SKO, 2025 WL 604744 (E.D. Cal. Feb. 25, 2025) (ordering bond hearing for noncitizen detained under 8 U.S.C. § 1226(c) for 13 months); *A.E. v. Andrews*, 1:25-cv-00107-KES-SKO, 2025 WL 1424382 (E.D. Cal. May 16, 2025) (ordering bond hearing for noncitizen detained under 8 U.S.C. § 1225(b) for 20 months).

Respondent resists both Mr. Peters’ release and, in the alternative, the ordering of a bond hearing for little reason other than that 8 U.S.C. § 1226(c) empowers ICE to detain him.

Respondent's Answer¹ describes the extreme length of Mr. Peters' absolute deprivation of liberty as "not extraordinary," ECF 8 ("Answer") at 7, without any evidence, and despite ICE's own reported data to the contrary.² Respondent, opting to rest on an absolutist and unsupported legal argument that prolonged detention during removal proceedings is *per se* constitutional, does not even attempt to refute Mr. Peters' evidence that he is **not** a danger or flight risk. *Compare* Answer at 2-4 *with* Petition ¶ at 44. Respondent also fails to substantiate the nonpunitive nature and effect of Mr. Peters' detention. And to argue against the need for a bond hearing, Respondent casts Mr. Peters' efforts to defend himself against deportation as "delay tactics[.]" Answer at 2, 7. Respondent's Answer does not establish that Mr. Peters' five-year detention without a bond hearing complies with constitutional due process. Thus, this Court should grant the Petition, order his release or, at the very least, order a bond hearing.

ARGUMENT

I. Petitioner's ongoing five-years-long ICE detention is unconstitutionally punitive.

Over 30 years ago, the Supreme Court in *Salerno* acknowledged that as time goes on, non-criminal custody can begin to have an unconstitutionally punitive effect. *Salerno*, 481 U.S. at 747 n.4. Relying on *Salerno*, the Ninth Circuit has held that 21 months of pretrial detention "approach[es] the outer bounds of due process" and that length "weighs in favor of recognizing a due process violation." *Torres*, 995 F.3d at 699, 708. This well-established precedent required a court in this Circuit to find a substantive due process violation where a noncitizen was detained

¹ Although styled as a "motion to dismiss . . . and response," Respondent's submission is a garden-variety answer responding to the Petition's merits. Pursuant to the habeas statute, *c.f.* 28 U.S.C. § 2243 (describing procedures, including answer), and this Court's scheduling order, ECF 5 at 2 (ordering Respondent to file an answer), Petitioner's traverse completes the pleadings. Any "reply" from Respondent in support of the purported "motion to dismiss" would be a sur-reply on the merits that is not contemplated by the Court's order or longstanding habeas procedures.

² ICE detention data from FY 2024 reports that noncitizens with criminal convictions spent on average 49.9 days in custody. https://www.ice.gov/doclib/detention/FY24_detentionStats.xlsx.

1 for 30 months at Golden State Annex, where Mr. Peters was also once held. *Doe v. Becerra*, 732
2 F. Supp. 3d 1071, 1082-1083 (N.D. Cal. 2024) (citing *Salerno* and stating: “Thirty months is an
3 extraordinary amount of time to spend in civil detention, including immigration detention.”); *see*
4 *also Lawson v. Gerlinski*, 332 F. Supp. 2d. 735, 744-47 (M.D. Pa. 2004) (finding 18-month
5 immigration detention violated substantive due process and ordering release). Mr. Peters has
6 endured twice the amount of detention found to violate substantive due process in *Doe v. Becerra*.
7 But Respondent claims *Salerno* “has no application to civil detention in executive branch
8 immigration court removal proceedings” and cautions this Court to “not invent applications or
9 suppose analogies from” *Salerno* or other pre-trial detention cases. Answer at 2-3. Respondent
10 also argues that *Demore v. Kim* precludes any argument that detaining Mr. Peters for more than
11 five years (10 times longer than he spent in criminal custody) has become punitive. *Id.* at 3 (citing
12 538 U.S. 510, 530-31 (2003)). Respondent is wrong on both fronts.
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15 Both the Supreme Court and the Ninth Circuit have deployed pretrial detention cases like
16 *Salerno* as guideposts for assessing due process challenges to immigration detention. In a
17 challenge to immigration bond hearing procedures, the Ninth Circuit rejected exactly what
18 Respondent argues here. *See Hernandez v. Sessions*, 872 F.3d 976, 993 (9th Cir. 2017). The Court
19 said: “the Supreme Court has recognized that criminal detention cases provide useful guidance in
20 determining what process is due non-citizens in immigration detention.” *Id.* (citing *Zadvydas*, 533
21 U.S. at 690-91). It further distinguished immigration cases from ordinary civil cases because they
22 “involve the awesome authority of the State to take a devastatingly adverse action”—here, the
23 power to deprive noncitizens of their liberty for years with no determinate end point. *Cf. id.* at 993
24 (internal citation omitted); *see also Padilla v. Kentucky*, 559 U.S. 356, 365 (2010) (“Although
25 removal proceedings are civil in nature, deportation is nevertheless intimately related to the
26 criminal process.”). By applying the standards set in pretrial detention and other civil commitment
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1 cases to assess Petitioner’s substantive due process challenge, this Court would be following the
2 decision-making process prescribed by binding authority, as other courts already have done in this
3 context. *See, e.g., Doe v. Wofford*, No. 1:24-CV-00943-EPG-HC, 2025 WL 1305859 (E.D. Cal.
4 May 6, 2025) (applying *Salerno* to deny Respondent’s motion to dismiss substantive due process
5 challenge and ordering Respondent to file an answer); *Doe*, 732 F. Supp. 3d at 1079-81.

6
7 After relying on the erroneous premise that pretrial detention cases are irrelevant here,
8 Respondent goes on to suggest that *Demore* directs this Court to ignore the length of Mr. Peters’
9 detention. Respondent is incorrect that *Demore* “found that even prolonged mandatory detention
10 during civil removal proceedings [does] not violate the U.S. Constitution’s due process
11 safeguards.” Answer at 3 (citing 538 U.S. at 530-31).³ As this Court has recognized, *Demore*
12 only “held that six months did not run afoul of the due process clause” and did not “specify an
13 outer limit as to what constitutes a permissible detention period.” *Diep*, 2025 WL 604744, at *3.
14 Additionally, the *Demore* Court emphasized that Section 1226(c) detention “lasts roughly a month
15 and a half in the vast majority of cases ... and about five months in the minority of cases in which
16 the [noncitizen] chooses to appeal.” *Id.* at *3 (quoting *Demore*, 538 U.S. at 530-31, internal
17 quotations omitted). Nothing in *Demore* or any other Supreme Court case overrules the well-
18 established principle that prolonged civil detention can amount to unconstitutional punishment.
19 *See Torres*, 995 F.3d at 708; *see also McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249-50 (1972)
20 (upholding “short-term confinement with a limited purpose;” however, “by the same token, the
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25 ³ The government conceded in briefing before the Supreme Court that *Demore* permits as-
26 applied challenges to prolonged detention. *See Jennings v. Rodriguez*, No. 15-1204, Brief for
27 Petitioners at 47 (“*Demore* provides guideposts for evaluating such a challenge. . . And because
28 longer detention imposes a greater imposition on an individual, as the passage of time increases a
court may scrutinize the fit between the means and the ends more closely.”).

duration of the confinement must be strictly limited” to adhere to due process).⁴

Finally, Respondent’s contention that Mr. Peters’ detention “has not been extraordinarily long” (Answer at 7) contradicts ICE’s own data. ICE published a report in July 2025 which reports on, among other things, the “average in custody length of stay.” ICE Detention Statistics, available at https://www.ice.gov/doclib/detention/FY24_detentionStats.xlsx, Sheet ICLOS and Detainees. For example, in June 2025, 68 adult noncitizens were in custody for more than 730 days (i.e. 2 years) of the 55,746 total detained. *Id.* Data for other months reflects similar trends. *See id.* ICE does not even report the number of noncitizens detained for lengths approaching Mr. Peters’, so quite literally, Mr. Peters’ detention is off the charts.

At now five years detained, nearly three times longer than the constitutionally tolerable outer limit that the Ninth Circuit recognized, *see Torres*, 995 F.3d at 709-710, Mr. Peters’ substantive due process rights have been violated. As Respondent acknowledges, Mr. Peters’ immigration case is ongoing, and he remains entitled to appeal of the recent decision to deny him adjustment of status. Answer at 2. Mr. Peters will remain detained for, at a minimum, several months more, if not years. Petition at ¶ 21. This Court should order his release on this basis.

II. Respondent does not contest that Mr. Peters is neither a danger nor flight risk.

Beyond its unrelenting duration, Mr. Peters’ civil detention further violates substantive due process because it is “excessive in relation to [its non-punitive] purpose,” and is “employed to achieve objectives that could be accomplished in so many alternative and less harsh methods[.]” *Jones v. Blanas*, 393 F.3d 918, 934 (9th Cir. 2004) (internal citations omitted). In the immigration

⁴ *See also* Petition ¶ 43 (citing *United States v. Theron*, 782 F.2d 1510, 1516-17 (10th Cir. 1986) (holding four months pretrial detention “too long” and ordering release within 30 days if trial did not commence); *United States v. Gonzales Claudio*, 806 F.2d 334, 341 (2d Cir. 1986) (“[d]etention that has lasted for fourteen months and, without speculation, is scheduled to last considerably longer, points strongly to a denial of due process”); *United States v. Chen*, 820 F. Supp. 1205, 1210 (N.D. Cal. 1992) (one-year detention unconstitutional)).

1 context, the Supreme Court has recognized only two valid purposes for civil detention—to mitigate
2 the risks of danger to the community and to ensure appearances at immigration proceedings.
3 *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 528. Respondent invites this Court to simply
4 assume that Mr. Peters’ detention is permissible because 8 U.S.C. § 1226(c) is facially
5 constitutional. *See* Answer at 6-7 (“civil detention is a constitutionally valid aspect of the
6 deportation process”). But due process must be analyzed on a “case-by-case” basis. *See Torres*,
7 995 F. 3d at 708. In Mr. Peters’ case, continued detention is not serving either of the
8 constitutionally valid purposes of preventing danger or flight.
9

10 The record shows that Mr. Peters’ five-year long detention is not only excessive in relation
11 to the goals of preventing flight and danger, but that his release poses neither of those concerns.
12 Petition at ¶ 44. ICE arrested Mr. Peters after he was released early from a 23-month sentence
13 imposed under Title 18 Pennsylvania Consolidated Statutes §§ 2706(a)(1) and 2701(a)(3). Petition
14 at ¶¶ 14-15. To qualify for early release, Mr. Peters had to meet various requirements related to
15 dangerousness assessed by the Pennsylvania Parole Board, including (1) the nature and
16 circumstances of the offense, (2) the general character and background of the offender, and (3) the
17 conduct of the person while in criminal custody. Penn. Parole Code § 6135. Mr. Peters has already
18 been deemed not dangerous by at least one competent authority, and Respondent has presented no
19 evidence to contradict the Pennsylvania Parole Board’s finding. Nor has Respondent shown that
20 Mr. Peters’ presents a flight risk or questioned the evidence that he does not. Upon his early release
21 from criminal custody, Mr. Peters complied with regularly scheduled meetings with a probation
22 officer. Petition at ¶ 44. Indeed, ICE is aware that Mr. Peters can be counted on to present himself
23 when required, since ICE orchestrated Mr. Peters’ arrest by directing his probation officer to call
24 him in. *Id.* Risk of danger or flight are not present in Mr. Peters’ case, and Respondent does not
25 meaningfully dispute that.
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Respondent also does not dispute that less harsh alternatives are available to ICE to mitigate any alleged risk, including ICE’s Intensive Supervision Appearance Program (“ISAP”), which has near-perfect compliance rates. *See generally* Answer; Petition at ¶ 45; *Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2011) (ISAP “resulted in a 99% attendance rate at all EOIR hearings and a 95% attendance rate at final hearings”). Given that Mr. Peters has complied with supervision requirements in the past, Petition at ¶ 44, and that Respondent has not argued that there is evidence showing he will not comply, detaining him rather than enrolling him in ISAP violates due process. *See Jones*, 393 F.3d at 934, 937 (remanding with instructions to determine whether “less harsh methods” could achieve the purposes underlying confinement).

Respondent asks the Court to blindly assume that Mr. Peters’ detention passes constitutional muster despite evidence to the contrary. Respondent contests none of the evidence that Mr. Peters is neither a danger nor a flight risk, nor does Respondent offer this Court with any evidence that he is. Respondent offers only conclusory statements such as “there is no evidence his detention during his civil removal proceedings is motivated for punitive reasons or that his detention otherwise fails to serve immigration purposes.” Answer at 6. Because Mr. Peters made an evidence-based showing of a substantive due process violation, and Respondent failed to contest it, the proper remedy is release. *See, e.g., Doe v. Becerra*, No. 23-cv-04767, Dkt. 56 (N.D. Cal. May 15, 2024) (ordering release); *Bent v. Barr*, 445 F. Supp. 3d 408, 418 (N.D. Cal. 2020) (ordering release where ICE detention conditions were excessive in relation to legitimate goals); *Doe v. Barr*, No. 20-cv-02141, 2020 WL 1820667, at *8-11 (N.D. Cal. Apr. 12, 2020) (same).

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III. Respondent failed to show that due process allows Mr. Peters’ prolonged detention without any neutral review thereof.

Mr. Peters’ procedural due process rights have also been violated since he has never had a bond hearing during his five-year detention, almost two years of which he spent waiting for the Board of Immigration Appeals (“BIA”) to grant his motion to reopen proceedings.⁵ A bond hearing before an immigration judge is a modest procedural safeguard that this Court has regularly ordered for noncitizens detained in ICE custody for far less time than Mr. Peters. *See, e.g., Lopez v. Garland*, 631 F. Supp. 3d 870 (E.D. Cal. Sept. 29, 2022) (1 year); *Diep*, 2025 WL 604744 (13 months); *Sho v. Current or Acting Field Off. Dir.*, No. 1:21-CV-01812 TLN AC, 2023 WL 4014649 (E.D. Cal. June 15, 2023) (28 months); *see also A.E.*, 2025 WL 1424382, at *3 (20 months detained under § 1225(b)); *Hilario M.R. v. Warden, Mesa Verde Det. Ctr.*, No. 1:24-CV-00998-EPG-HC, 2025 WL 1158841 (E.D. Cal. Apr. 21, 2025) (ordering a second bond hearing 10 months after the first hearing). But even this Respondent resists.

First, Respondent asks the Court to follow *Keo v. Warden-Mesa Verde ICE Processing Center*, a nonprecedential case that was wrongly decided and is factually distinguishable. Answer at 4-5 (citing 24-cv-00919, 2025 WL 1029392 (E.D. Cal. Apr. 7, 2025)). *Keo* found a noncitizen’s 22-month detention without a bond hearing to be reasonable because there was no delay “directly attributable to the government” and removal proceedings remained ongoing. *Keo*, 2025 WL 1029392, at *6, 8. Ignoring the Ninth Circuit’s “grave doubts” that no-bail detention beyond six months comports with due process, *Rodriguez v. Marin*, 909 F.3d 252, 255, 256 (9th Cir. 2018), *Keo* followed an Eighth Circuit decision that incorrectly read *Demore* to permit prolonged

⁵ The government has conceded that “[i]f . . . the government is responsible for an unusually long proceeding the [noncitizen] may have a potential due process claim.” *See Jennings*, Brief for Petitioners at 49.

detention during removal proceedings. *Keo*, 2025 WL 1029392, at * 6 (citing *Banyee v. Garland*, 115 F. 4th 928, 933 (8th Cir. 2024)).⁶ As explained *supra* Section I, this conclusion is unsupported because *Demore* only considered detention lengths up to five months. *See Diep*, 2025 WL 604744, at *3. Tellingly, *Keo* acknowledged that its reasoning departed from this District’s consensus that due process can require a bond hearing for noncitizens in Mr. Peters’ position. *See Keo*, 2025 WL 1029392, at *5 (collecting cases). Putting aside its improper reasoning, *Keo* is inapposite here since nearly two years of Mr. Peters’ detention is due to the government’s delay.

Second, recognizing the *Mathews v. Eldridge* framework, Respondent insinuates that Mr. Peters has no cognizable liberty interests at all, regardless of how long he has been detained. Because Mr. Peters is pursuing immigration relief, Respondent says that he is “detained in furtherance of his own goal.” Answer at 6. “[I]t ill suits the United States to suggest that [Mr. Peters] could shorten his detention by giving up these rights and abandoning” his immigration applications. *Masood v. Barr*, No. 19-CV-07623, 2020 WL 95633, at *3 (N.D. Cal. Jan. 8, 2020) (ordering a bond hearing). And despite that Mr. Peters languished for almost two years awaiting a single BIA decision, Petition at ¶ 19-20, Respondent accuses Mr. Peters of “delay[ing] his immigration court proceedings.” Answer at 2.⁷ Respondent also claims that Mr. Peters’ prior criminal incarceration vanquishes any interest he may have in freedom from civil custody. Answer at 6. But not only was Mr. Peters’ free in the community when ICE arrested him, but his liberty

⁶ *See supra* at n. 4.

⁷ Mr. Peters’ then-newly retained *pro bono* counsel filed a successful emergency motion to reopen after the immigration judge failed to advise Mr. Peters, previously *pro se* in immigration court, of his rights to seek adjustment of status as a refugee. Petition at ¶¶ 18-20. Respondent repeatedly describes Petitioner’s motion to reopen and accompanying filings as “untimely” and “belated.” Answer at 2, 4. But the BIA itself rejected that the motion was time-barred because Mr. Peters “established both the requisite due diligence and that an extraordinary circumstance prevented him from filing his motion to reopen within the 90-day deadline.” ECF 8-1, Ex. 28 at 2. The Court should not ascribe any delay to Mr. Peters, and certainly not when the BIA took nearly two years to adjudicate his appeal. *See* Petition at ¶ 18, 19.

1 “interest is not extinguished by the fact that [he] is detained pursuant to § 1226(c).” *Sho*, 2023 WL
2 4014649, at *4. After more than five years detained in at least seven facilities where he been
3 abused, neglected, and forced to work for \$1 per day, Petition at ¶¶ 22-25, Mr. Peters’ “private
4 interest here – freedom from prolonged detention – is unquestionably substantial.” *Singh v.*
5 *Holder*, 638 F.3d 1196, 1208 (9th Cir. 2011) (finding due process violation in bond hearing
6 procedures).

7
8 **Finally**, Respondent’s conclusory statement that ICE’s interest in detaining Mr. Peters is
9 “strong” misses the point. *See* Answer at 7. As this Court has explained: “the key government
10 interest at stake here is not the continued detention of Petitioner, but the government’s ability to
11 detain him *without a bond hearing*.” *Diep*, 2025 WL 604744 at * 5 (internal quotations omitted
12 and emphasis added); *Sho*, 2025 WL 4014649, at *4; *see also Zerezghi v. U.S. Citizenship &*
13 *Immigr. Servs.*, 955 F.3d 802, 810 (9th Cir. 2020) (noting that “the question [under the third
14 *Mathews* factor] is not the government’s interest in immigration enforcement” “in general”).
15 Respondent has articulated no interest in detaining Mr. Peters without a bond hearing, nor could it
16 since it has “no legitimate interest” in detaining people who are not a danger or flight risk.
17 *Hernandez*, 872 F.3d at 990-91. Further, a bond hearing presents minimal costs to the government.
18 *Diep*, 2025 WL 604744 at *5.

19
20 Since ICE’s generalized interest in detaining Mr. Peters pales in comparison to Mr. Peters’
21 liberty interests, the Court should find a procedural due process violation.

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23 * * *

24 Mr. Peters’ detention has become constitutionally intolerable due to both its duration
25 and to Respondent’s inability to refute that Mr. Peters presents no significant danger or flight
26 risk. Should the Court determine that Mr. Peters’ detention under these circumstances comports
27 with substantive due process (it does not), Respondent, at the very least, should be required to
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1 bear the burden of proving the necessity of Mr. Peters' continued prolonged detention by clear
2 and convincing evidence.

3 **CONCLUSION**

4 Mr. Peters respectfully urges this Court to order his release, or to order the minimal
5 safeguard of a bond hearing that considers Mr. Peters' ability to pay and alternatives to detention.
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7
8 Dated: July 16, 2025

By: Victoria Petty

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