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**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO CIVIL DIVISION**

Anton KALASHNIKOV (A ))
) *Petitioner,*)
v.)
Warden, Wanda Wilson, Golden State)
Annex Detention Center; Pam BONDI,)
Attorney General, in her official capacity;)
U.S. Department of Justice; Kristi NOEM,)
Secretary, U.S. Department of Homeland)
Security, in her official capacity; U.S.)
Department of Homeland Security;)
Moises BECERRA, Field Office Director,)
San Francisco Field Office, in his official)
capacity; Todd LYONS, Acting Director)
U.S. Immigration and Customs)
Enforcement, in his official capacity; U.S.)
Immigration and Customs Enforcement;)
Joseph B. EDLOW, Director, U.S.)
Citizenship and Immigration Services,)
in his official capacity; U.S. Citizenship)
and Immigration Services,)
Respondents.)
)

Case No. 1:25-at-00638

**Petition for Writ of Habeas Corpus
Pursuant to 28 U.S.C. § 2241**

Oral Argument Requested

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 and their failure to arrange his USCIS interview, as follows:

INTRODUCTION

1. Petitioner is currently detained by Immigration and Customs Enforcement ("ICE") at the Golden State Annex Detention Center, McFarland, California pending removal proceedings.

2. Petitioner has been detained in immigration custody since December 23, 2024, over seven (7) 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. Moreover, ICE has not established that there was a change in circumstances to support Petitioner's re-detention on December 23, 2024, after having been detained upon his arrival to the United States at the San Ysidro Port of Entry on March 20, 2022 and his release from custody on parole April 26, 2022. *Saravia for A.H. v. Sessions*, 905 F.3d 1137, 1202 (9th Cir. 2018).

3. Petitioner's detention without a showing of changed circumstances and his subsequent prolonged detention without a hearing to determine danger and flight risk violates the Due Process Clause of the Fifth Amendment.

4. Additionally, Petitioner is the beneficiary of an I-730, Refugee/Asylee Relative Petition filed by his wife, Iuliia Kalashnikova, on September 26, 2023 following her grant of asylum. The United States Citizenship and Immigration Services ("USCIS") has not completed processing of the petition for almost two years, which, once granted, would convey permanent asylum status to the Petitioner, protecting him from removal from the United States.

5. USCIS has stated they cannot interview the Petitioner because he is detained, but they have refused to make any other arrangements, such as conducting a video interview, to complete the processing of his wife's Refugee/Asylee Relative Petition under which he is a beneficiary. Concurrently, ICE has refused to transport Petitioner for his interview at USCIS or to coordinate other interview arrangements, despite the fact that the approval of the I-730 petition would result in Petitioner being granted permanent asylum status in the United States and put an end to his removal proceedings.

6. 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 changed circumstances to justify his re-detention, nor have they established by clear and convincing evidence that Petitioner presents a risk of flight or danger in light of any 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.

7. 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) the government must prove a change of circumstance existed to justify Petitioner's re-detention in December 2024; (2) should a change of circumstance be established, 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 (3) 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.

8. Alternatively, should Petitioner remain detained, he requests that the Court issue a writ of habeas corpus and order Respondents to transport Petitioner to his USCIS interview or otherwise coordinate Petitioner's I-730 interview and that USCIS be ordered to schedule and coordinate the appearance of Petitioner for his I-730, Asylum/Refugee Relative Petition interview.

JURISDICTION

9. Petitioner is detained in the custody of Respondents at the Golden State Annex Detention Center, McFarland, California.

10. 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.

11. Congress has preserved judicial review of challenges to prolonged and unconstitutional immigration detention. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 839-841 (2018) (holding that 8 U.S.C. §§ 1226(c), 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

12. Venue is proper in this District under 28 U.S.C. § 1391 because at least one Respondent is in this District and because Petitioner is presently detained under the authority of the Warden, Wanda Wilson, of Golden Annex Detention Center, the Director of the San Francisco ICE Field Office and DHS, Respondents in this action.

13. Golden Annex Detention Center is operated by a private contractor and controlled by the San Francisco Field Office of ICE Enforcement and Removal Operations (“ERO”). The San Francisco Field Office of ICE ERO is responsible for carrying out ICE’s detention operations at this detention center and for adjudicating requests for release from those detained there.

14. Respondent, Warden of the Golden Annex Detention Center, Wanda Wilson, resides in this district for venue purposes because their official duties are performed in this district. *Rumsfeld v. Padilla*, 542 U.S. 426, 124 S.Ct. 2711, 159 L.Ed.2d 513 (2004), *see, e.g., Lopez-Marroquin v. Barr*, 955 F.3d 759 (9th Cir. 2020).

REQUIREMENTS OF 28 U.S.C. § 2243

15. 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).

16. 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

17. Anton Kalashnikov, Petitioner, is a noncitizen Russian citizen currently detained by Respondents at Golden State Annex, 611 Frontage Rd, McFarland, CA pending ongoing removal proceedings before the Executive Office for Immigration Review (“EOIR”) and adjudication by USCIS of his wife’s I-730, Refugee/Asylee Relative Petition.

18. Respondent Warden (Facility Administrator, GEO Group), Wanda Wilson, Golden State Annex, 611 Frontage Rd, McFarland, CA 93250, is the immediate custodian of the Petitioner who is being detained at the Golden State Annex.

19. Kristi Noem, 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). DHS are the legal custodians of Petitioner. They are named in their official capacity.

20. Pam Bondi, 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 immigration laws and adjudicate removal cases. They delegate this responsibility to the EOIR, which administers the immigration courts and the Board of Immigration Appeals ("BIA"). They are named in their official capacity.

21. Moises Becerra, Respondent Field Office Director, 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 along with the Warden (Facility Administrator) of the Golden State Annex and are named in their official capacity.

22. Respondent, Todd Lyons, Acting Director of ICE is responsible for ICE's policies, practices, and procedures, including those relating to the detention of immigrants. They are the legal custodians alongside the Warden of the Golden State Annex of Petitioner and are named in their official capacity.

23. Respondent, Joseph B. Edlow, Director of USCIS is responsible for USCIS policies, practices and procedures, including scheduling Respondent's interview and processing of his wife's currently pending I-730, Refugee/Asylee Relative Petition. They are named in their official capacity.

STATEMENT OF FACTS

24. Petitioner is a thirty-year-old citizen of Russia, married to Iuliia Kalishnikova, also a Russian citizen, who has been granted asylum in the United States on August 7, 2023. They were married August 28, 2020. Petitioner applied for admission to the United States at the San Ysidro Port of Entry on March 20, 2022. He was paroled into the United States and released on his own recognizance on April 26, 2022. *See Exhibits A & B.* A Notice to Appear ("NTA") was prepared on November 6, 2024, and served on the Petitioner by mail. This NTA was not properly executed and a second NTA was prepared November 22, 2024 and served by mail on the Petitioner

1 scheduling him for his initial Immigration Court appearance on July 7, 2026 at 1:30 PM in the San Francisco
2 Immigration Court.

3 25. Despite being released on parole shortly after his arrival, Petitioner was subsequently detained by
4 DHS on December 23, 2024, though no change of circumstances had occurred. Respondent's removal proceedings
5 before the Immigration Court are currently on-going, now in a detained setting. Currently, Petitioner is immediately
6 eligible for permanent asylum status pending action by USCIS as his wife, Iuliia Kalashnikova, has been granted
7 asylum and filed an I-730, Refugee/Asylum Relative Petition almost two years ago on September 26, 2023.
8 Respondent USCIS is processing the petition, though has refused to continue processing due to the Petitioner's
9 detention. *See Exhibit C.* Petitioner also has an on-going claim for asylum pending before EOIR. He currently has a
10 Master Calendar Hearing scheduled before the Immigration Court on August 5, 2025 at 1:00 PM.

11 26. Petitioner was re-detained by ICE on December 23, 2024 and has been held in DHS custody at
12 Golden State Annex since that date. Petitioner has not been provided any explanation for his re-detention, nor has he
13 been afforded a bond hearing before a neutral decisionmaker to determine whether his prolonged detention is
14 justified based on danger or flight risk.

15 27. As an arriving noncitizen under 8 USC § 1225, the Immigration Court ruled that it lacks
16 jurisdiction and authority to provide Petitioner with a bond hearing to determine whether Petitioner's detention is
17 justified. *See Exhibit D.* As such, there is no statutory or regulatory pathway for Petitioner to seek a bond hearing
18 before a neutral decisionmaker other than through a writ of habeas corpus.

19 28. Absent intervention by this Court, Petitioner cannot and will not be provided with a bond hearing
20 by a neutral decisionmaker to assess the propriety of Petitioner's continue detention.

21 LEGAL BACKGROUND

22 29. “It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in
23 deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306
24 (1993)). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—
25 lies at the heart of the liberty” that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001);
26 *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)

1 (“[B]oth removable and inadmissible [noncitizens] are entitled to be free from detention that is arbitrary or
2 capricious”).

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

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

24 **A. Re-Detention Without Changed Conditions and That Exceeds Six Months Without
25 A Bond Hearing Is Unconstitutional.**

26 32. Detention without a bond hearing is unconstitutional when it exceeds six months. *See Demore*,
27 538 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”); *Riego v. Warden Scott*, No. 1:24-CV-01162-SKO (HC), 2025 WL 660535, at *3 (E.D. Cal. Feb. 28, 2025) citing *Rodriguez v. Marin* (“*Rodriguez IV*”), 909 F.3d 252, 256 (9th Cir. 2018).

33. 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.

34. 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).

35. 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).

36. 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).

37. 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). 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.

38. 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).

39. Second, Petitioner will suffer the erroneous risk of deprivation of his liberty without an individualized evidentiary hearing. The risk of erroneous deprivation of their liberty is high, as he has been detained since December 23, 2024 without any showing of changed circumstances or evaluation of whether the government can justify detention under his individualized circumstances. “[T]he risk of an erroneous deprivation of liberty in the absence of a hearing before a neutral decisionmaker is substantial.” *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1185 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018).

40. 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). The cost of providing an individualized inquiry is minimal. *See Henriquez*, 2022 WL 2132919, at *5.

The government has repeatedly conceded this fact. *See Singh v. Barr*, 400 F. Supp. 3d 1005, 1021 (S.D. Cal. 2019).

41. 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 District and Circuit have repeatedly held that prolonged detention without a hearing before a neutral adjudicator violates procedural due process for individuals who were held under the same detention statute. *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 under § 1226(c) of just over one year without a custody hearing was “not compatible with due process” and granting habeas). This Court should so hold as well.

42. *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 § 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. 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.

43. 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 under § 1226(c) 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.

44. As noted, Petitioner has been detained for a substantial length of time and Petitioner’s detention is likely to continue as Petitioner asserts his right to seek immigration relief. 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.”).

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

45. 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.

47. 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); *Zadydas*, 533 U.S. at 692

(finding post-final-order custody review procedures deficient because, inter alia, they placed burden on detainee); *Singh v. Garland*, Case No. 1:23-cv-01043-EPG-HC, 2023 WL 5836048, at *10–11 (E.D. Cal. Sept. 8, 2023).

48. 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”). 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.

49. 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.

50. 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

1 of release for people detained for immigration purposes, due process requires “consideration of financial
2 circumstances and alternative conditions of release.” *Id.*; see also *Martinez v. Clark*, 36 F.4th 1219, 1231 (9th Cir.
3 2022) (“While the government had a legitimate interest in protecting the public and ensuring the appearance of
4 noncitizens in immigration proceedings, we held [in *Hernandez*] that detaining an indigent alien without
5 consideration of financial circumstances and alternative release conditions was ‘unlikely to result’ in a bond
6 determination ‘reasonably related to the government’s legitimate interests.’ (citation omitted).”).

7 **CLAIM FOR RELIEF**

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

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

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

13 53. To justify Petitioner’s ongoing prolonged detention and initial re-detention without a showing of
14 changed circumstances, due process requires that the government establish, at an individualized hearing before a
15 neutral decisionmaker, that Petitioner’s detention is justified by clear and convincing evidence of flight risk or
16 danger, taking into account whether alternatives to detention could sufficiently mitigate that risk.

17 54. For these reasons, Petitioner’s ongoing prolonged detention without a hearing violates due
18 process.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Petitioner respectfully requests that this Court:

- 21 1) Assume jurisdiction over this matter;
- 22 2) Issue a Writ of Habeas Corpus, hold a hearing before this Court if warranted,
23 determine that Petitioner’s detention is not justified because the government has not established either a change of
24 circumstance to support his rearrest or established by clear and convincing evidence that Petitioner presents a risk of
25 flight or danger in light of available alternatives to detention since his last arrest, and order Petitioner’s release (with
26 appropriate conditions of supervision if necessary), taking into account Petitioner’s ability to pay a bond;
- 27 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 the changed circumstances under which Petitioner was returned to custody in

December 2024; (2) 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 (3) 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) Should Petitioner continue to be detained, order ICE to coordinate with USCIS for Petitioner's I-730 Visa Petition interview and transport him to this interview or make alternative arrangements for him to appear at the required interview so he may be granted the immigration relief he is entitled to through his wife;

4) Issue a declaration that Petitioner's unsupported re-detention and 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.

Respectfully submitted,
On behalf of the Petitioner

Date: July 31, 2025

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