

FILED

DEC 11 2025

1 BULAT SAMBUEV

2 
3 GOLDEN STATE ANNEX
4 611 FRONTAGE RD
5 MCFARLAND, CA 93250
6 **PRO SE**

CLERK U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY  DEPUTY CLERK

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

9
10 BULAT SAMBUEV

11 

12 Petitioner,

13
14 v.

15 TONYA ANDREWS, Facility
16 Administrator of Golden State Annex
17 Detention Facility; SERGIO ALBARRAN,
18 Acting Field Office Director of the San
19 Francisco Immigration and Customs
20 Enforcement Office; TODD M. LYONS,
21 Acting Director of United States Immigration
and Customs Enforcement; KRISTI NOEM,
Secretary of the United States Department of
Homeland Security; PAMELA BONDI,
Attorney General of the United States,

22 Respondents.
23

Case No. 1:25CV01814 DJC-AC (HL)

Petition for Writ of Habeas Corpus

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

26 Petitioner respectfully petitions this Honorable Court for a writ of habeas corpus to
27 remedy Petitioner's unlawful detention by Respondents, as follows:
28

INTRODUCTION

Petitioner is currently detained by Immigration and Customs Enforcement (“ICE”) at the Golden State Annex Detention Facility pending removal proceedings.

Petitioner has been detained in immigration custody for over 6 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.

Petitioner’s prolonged detention without a hearing on danger and flight risk violates the Due Process Clause of the Fifth Amendment.

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.

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.

JURISDICTION

Petitioner is detained in the custody of Respondents at GOLDEN STATE ANNEX detention center 611 FRONTAGE RD MCFARLAND, CA 93250.

1 This action arises under the Due Process Clause of the Fifth Amendment of the U.S.
2 Constitution. Jurisdiction is proper under 28 U.S.C. §§ 1331 (federal question), 2241 (habeas
3 corpus); U.S. Const. art. I, § 2; (Suspension Clause); and 5 U.S.C. § 702 (Administrative Procedure
4 Act. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et seq., the
5 Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.

6 Congress has preserved judicial review of challenges to prolonged immigration
7 detention. See *Jennings v. Rodriguez*, 138 S. Ct. 830, 839-841 (2018) (holding that 8 U.S.C. §§
8 1226(e), 1252(b)(9) do not bar review of challenges to prolonged immigration detention); see also
9 *id.* at 876 (Breyer, J., dissenting). (“8 U.S.C. § 1252(b)(9) . . . by its terms applies only with respect
10 to review of an order of removal”) (internal quotation marks and brackets omitted).

11 VENUE

12 Venue is proper in this District because this is the district in which Petitioner is confined.
13 See *Doe v. Garland*, 109 F.4th 1188, 1197-99 (9th Cir. 2024).

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

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

PARTIES

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

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

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.

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.

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.

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

Petitioner is a noncitizen currently detained by Respondents. Respondent is a native and citizen of the Russian Federation who has been in the custody of U.S. Immigration and

1 Customs Enforcement ("ICE") at the Golden State Annex Detention Center since approximately
2 June 3 2025.

3 On October 22, 2025, this Court found Respondent removable under INA §
4 212(a)(6)(A)(i), but granted him withholding of removal the order has become administratively
5 final.

6 On July 17, 2025, prior to the merits decision, Respondent requested a bond hearing.
7 Immigration Judge denied that request solely on the ground that the Court lacked jurisdiction to
8 consider bond for Respondent as an "arriving alien" detained under INA § 235(b), in reliance on
9 Matter of Q. Li, 29 I&N Dec. 66 (BIA 2025).

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

12 The Immigration Court lacked jurisdiction and authority to provide Petitioner with a
13 bond hearing to determine whether Petitioner's detention is justified. See 8 U.S.C. §§
14 1225(b);1226(c). There is no statutory or regulatory pathway for Petitioner to seek a bond hearing
15 before a neutral decisionmaker.

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

18 Additional facts that support Petitioner's entitlement to relief are: res

- 19 6. Respondent entered the United States without inspection near San Luiz AZ on or about
20 June 22 2023. He was apprehended by U.S. Border Patrol and initially processed as an
21 "alien present", DHS issued a Notice to Appear and placed him in full § 240 removal

1 proceedings. Respondent was paroled into the US pursuant to INA 21 (a) (6) (A) (i).
2 approximately on July 2 2023.

3 **7. During his time on release, Petitioner maintained a clean criminal record, and he**
4 **complied with his release requirements. He has been consistently checking in with**
5 **ICE and complying with ISAP as requested. He supported his wife and stepson in the**
6 **US.**

7 **8. Petitioner was again detained while in the US pursuant to INA 21 (a) (6) (A) (i). On June**
8 **6th 2025 when the Petitioner appeared in person for hearing in San Francisco immigration**
9 **court where he was taken into custody by ICE officers J.Craig (CBPO) and K.Wu (DO).**
10 **No reason, order or warrant were provided to justify detention. Petitioner was held**
11 **handcuffed for more than 12 hours before transfer to the detention facility.**

12 **9. Since being detained, petitioner has been unable to support his wife and stepson.**

13 **10. On July 9th, 2025, Petitioner, through counsel, requested a bond hearing. At that time, DHS**
14 **asserted that Petitioner was detained under INA § 235(b) and that Matter of Q. Li deprived**
15 **the Immigration Court of bond jurisdiction. IJ agreed and issued a decision stating that the**
16 **Court lacked jurisdiction to redetermine custody. No bond or parole factors were reached**
17 **on the merits.**

18 **11. On October 22, 2025, this Court granted Petitioner withholding of removal and CAT**
19 **protection and entered a corresponding order. Petitioner remains detained at Golden State**
20 **Annex despite being legally protected from removal to Russia and despite the lack of any**
21 **realistic prospect of removal to a third country in the reasonably foreseeable future.**

22 **12. Conditions of confinement at Golden State Annex further violate Petitioner's basic**
23 **human and constitutional rights and underscore the arbitrary and punitive nature of his continued**

1 detention. Petitioner is held in overcrowded and unsanitary housing units, receives nutritionally
2 inadequate food, and lacks consistent access to basic hygiene and other necessities (basic
3 underwear and clothes). Petitioner is effectively denied timely and adequate medical care: his
4 requests for medical attention are routinely ignored or subjected to lengthy delays, and he is often
5 unable to see a qualified medical provider when needed. Because of the overcrowding and the
6 layout of the unit, Petitioner has virtually no opportunity to walk or engage in any meaningful
7 physical activity; inside the housing unit there is simply no space where detainees can move freely
8 or exercise. In addition, correctional staff at the facility have repeatedly subjected Petitioner to
9 degrading and humiliating verbal abuse, including slurs and derogatory remarks directed at him
10 on the basis of his race and national origin, and have on multiple occasions engaged in unnecessary,
11 non-consensual physical contact with Petitioner and other detainees without any legitimate
12 security justification. These conditions cause Petitioner ongoing physical and psychological harm,
13 bear no reasonable relation to any legitimate governmental objective, and render his already-
14 prolonged civil immigration detention punitive in violation of the Due Process Clause of the Fifth
15 Amendment.

16 LEGAL BACKGROUND

17 Because civil immigration detention is typically justified only when a noncitizen
18 presents a risk of flight or danger to the community, see *Zadvydas v. Davis*, 533 U.S. 678, 690
19 (2001), *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023), petitioner argues that the
20 Due Process Clause bars the government from re-detaining him without first providing a hearing
21 where it must prove he is a flight risk or danger.

22 “It is well established that the Fifth Amendment entitles [noncitizens] to due process
23 of law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v.*

1 Flores, 507 U.S. 292, 306 (1993)). “Freedom from imprisonment—from government custody,
2 detention, or other forms of physical restraint—lies at the heart of the liberty” that the Due Process
3 Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); see also *id.* at 718 (Kennedy, J.,
4 dissenting) (“Liberty under the Due Process Clause includes protection against unlawful or
5 arbitrary personal restraint or detention.”). This fundamental due process protection applies to all
6 noncitizens, including both removable and inadmissible noncitizens. See *id.* at 721 (Kennedy, J.,
7 dissenting) (“[B]oth removable and inadmissible [noncitizens] are entitled to be free from
8 detention that is arbitrary or capricious”).

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

15 Due process requires that the government provide bond hearings to noncitizens facing
16 prolonged detention. “The Due Process Clause foresees eligibility for bail as part of due process”
17 because “[b]ail is basic to our system of law.” *Jennings*, 138 S. Ct. at 862 (Breyer, J., dissenting)
18 (internal quotation marks omitted). While the Supreme Court upheld the mandatory detention of a
19 noncitizen under Section 1226(c) in *Demore*, it did so based on the petitioner’s concession of
20 deportability and the Court’s understanding at the time that such detentions are typically “brief.”
21 *Demore*, 538 U.S. at 522 n.6, 528. Where a noncitizen has been detained for a prolonged period
22 or is pursuing a substantial defense to removal or claim to relief, due process requires an
23 individualized determination that such a significant deprivation of liberty is warranted. *Id.* at 532

1 (Kennedy, J., concurring) (“[I]ndividualized determination as to his risk of flight and
2 dangerousness” may be warranted “if the continued detention became unreasonable or
3 unjustified”); see also *Jackson v. Indiana*, 406 U.S. 715, 733 (1972) (holding that detention beyond
4 the “initial commitment” requires additional safeguards); *McNeil v. Dir., Patuxent Inst.*, 407 U.S.
5 245, 249-50 (1972) (holding that “lesser safeguards may be appropriate” for “short- term
6 confinement”); *Hutto v. Finney*, 437 U.S. 678, 685-86 (1978) (holding that, in the Eighth
7 Amendment context, “the length of confinement cannot be ignored in deciding whether
8 [a]confinement meets constitutional standards”); *Reid v. Donelan*, 17 F.4th 1, 7 (1st Cir. (holding
9 that “the Due Process Clause imposes some form of reasonableness limitation upon the duration
10 of detention” under section 1226(c)) (internal quotation marks omitted).

11 Detention That Exceeds Six Months Without A Bond Hearing Is Unconstitutional.
12 Detention without a bond hearing is unconstitutional when it exceeds six months. See *Demore*,
13 538 U.S. at 529-30 (upholding only “brief” detentions under Section 1226(c), which last “roughly
14 a month and a half in the vast majority of cases in which it is invoked, and about five months in
15 the minority of cases in which the [noncitizen] chooses to appeal”); *Zadvydas*, 533 U.S. at 701
16 (“Congress previously doubted the constitutionality of detention for more than six months.”);
17 *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1091 (9th Cir. 2022) (“[O]nce the [noncitizen] has been
18 detained for approximately six months, continuing detention becomes prolonged” (cleaned up)
19 (quoting *Diouf v. Napolitano*, 634 F.3d 1081, 1091 (9th Cir. 2011)));

20 *Rodriguez v. Nielsen*, Case No. 18-CV-04187-TSH, 2019 WL 7491555, at *6 (N.D.
21 Cal. Jan. 7, 2019) (“[D]etention becomes prolonged after six months and entitles [Petitioner] to a
22 bond hearing”).

1 The recognition that six months is a substantial period of confinement—and is the time
2 after which additional process is required to support continued incarceration—is deeply rooted in
3 our legal tradition. With few exceptions, “in the late 18th century in America crimes triable without
4 a jury were for the most part punishable by no more than a six-month prison term.” *Duncan v.*
5 *Louisiana*, 391 U.S. 145, 161 & n.34 (1968). Consistent with this tradition, the Supreme Court has
6 found six months to be the limit of confinement for a criminal offense that a federal court may
7 impose without the protection afforded by jury trial. *Cheff v. Schnackenberg*, 384 U.S. 373, 380
8 (1966) (plurality opinion). The Court has also looked to six months as a benchmark in other
9 contexts involving civil detention. See *McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249, 250-52
10 (1972) (recognizing six months as an outer limit for confinement without individualized inquiry
11 for civil commitment). The Court has likewise recognized the need for bright line constitutional
12 rules in other areas of law. See *Maryland v. Shatzer*, 559 U.S. 98, 110 (2010) (holding that 14 days
13 must elapse following invocation of Miranda rights before re-interrogation is permitted); *Cnty. of*
14 *Riverside v. McLaughlin*, 500 U.S. 44, 55-56 (1991) (holding that a probable cause hearing must
15 take place within 48 hours of warrantless arrest).

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

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

22 Each year, thousands of noncitizens are incarcerated for lengthy periods pending the
23 resolution of their removal proceedings. See *Jennings*, 138 S. Ct. at 860 (Breyer, J., dissenting)

1 (observing that class members, numbering in the thousands, had been detained “on average one
2 year” and some had been detained for several years). For noncitizens who have some criminal
3 history, their immigration detention often dwarfs the time spent in criminal custody, if any. *Id.*
4 (“between one-half and two-thirds of the class served [criminal] sentences less than six months”).

5 Petitioner faces severe hardships while detained by ICE. Petitioner is held in a locked
6 down facility, with limited freedom of movement and access to Petitioner’s family or support
7 network: “[T]he circumstances of their detention are similar, so far as we can tell, to those in many
8 prisons and jails.” *Jennings*, 138 S. Ct. at 861 (Breyer, J., dissenting); accord *Chavez–Alvarez v.*
9 *Warden York Cnty. Prison*, 783 F.3d 469, 478 (3d Cir. 2015); *Ngo v. INS*, 192 F.3d 390, 397-98
10 (3d Cir. 1999); *Sopo v. U.S. Att’y Gen.*, 825 F.3d 1199, 1218, 1221 (11th Cir. 2016). “And in some
11 cases the conditions of their confinement are inappropriately poor” including, for example,
12 “invasive procedures, substandard care, and mistreatment, e.g., indiscriminate strip searches, long
13 waits for medical care and hygiene products, and, in the case of one detainee, a multiday lock
14 down for sharing a cup of coffee with another detainee.” *Jennings*, 138 S. Ct. at 861 (Breyer, J.,
15 dissenting) (citing Press Release, Off. of Inspector Gen., Dept. of Homeland Sec., DHS OIG
16 Inspection Cites Concerns With Detainee Treatment and Care at ICE Detention Facilities (Dec. 14,
17 2017)); see also Tom Dreisbach, Government’s own experts found ‘barbaric’ and ‘negligent’
18 conditions in ICE detention, NPR (Aug. 16, 2023, 5:01 AM) (reporting on the “‘negligent’ medical
19 care (including mental health care), ‘unsafe and filthy’ conditions, racist abuse of detainees,
20 inappropriate pepper-spraying of mentally ill detainees and other problems that, in some cases,
21 contributed to detainee deaths” contained in inspection reports prepared by experts from the
22 Department of Homeland Security’s Office for Civil Rights and Civil Liberties after examining
23 detention facilities between 2017 and 2019).

1 Individuals at Golden State Annex Detention Facility have described receiving food
2 contaminated with insects (including cockroaches, flies, and spiders), hair, and other foreign
3 objects. See California Collaborative for Immigrant Justice, *Starving for Justice: The Denial of*
4 *Proper Nutrition in Immigration Detention*, at p. 7 (April 2022), available at
5 https://www.ccijjustice.org/_files/ugd/733055_c43b1cbbdda341b894045940622a6dc3.pdf. At
6 Mesa Verde Detention Facility, over 80% of detained individuals who responded to one survey
7 said they had received expired food. *Id.*

8 The Mathews test for procedural due process claims balances: (1) the private interest
9 threatened by governmental action; (2) the risk of erroneous deprivation of such interest and the
10 value of additional or substitute safeguards; and (3) the government interest. *Mathews v. Eldridge*,
11 424 U.S. 319, 335 (1976); see also *Sho v. Current or Acting Field Off. Dir.*, No. 1:21-CV-01812
12 TLN AC, 2023 WL 4014649, at *3 (E.D. Cal. June 15, 2023), report and recommendation adopted,
13 No. 1:21-CV-1812-TLN-AC, 2023 WL 4109421 (E.D. Cal. June 21, 2023) (applying Mathews
14 factors to a habeas petitioner's due process claims and collecting cases doing the same). Here, each
15 factor weighs in Petitioner's favor, requiring this Court to promptly hold a hearing to evaluate
16 whether the government can justify their ongoing detention.

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

1 Second, Petitioner will suffer the erroneous risk of deprivation of their liberty without
2 an individualized evidentiary hearing. The risk of erroneous deprivation of their liberty is high, as
3 they have been detained since June 2025 without any evaluation of whether the government can
4 justify detention under their individualized circumstances. “[T]he risk of an erroneous deprivation
5 of liberty in the absence of a hearing before a neutral decisionmaker is substantial.” *Diouf*, 634 F.3d
6 at 1092. Conversely, “the probable value of additional procedural safeguards— an individualized
7 evaluation of the justification for his detention—is high, because Respondents have provided
8 virtually no procedural safeguards at all.” *Jimenez v. Wolf*, No. 19-cv-07996-NC, 2020 WL
9 510347, *3 (N.D. Cal. Jan. 30, 2020) (granting habeas petition for person who had been detained
10 for one year without a bond hearing).

11 Third, the government’s interest is very low in continuing to detain Petitioner without
12 providing any neutral review. See *Mathews*, 424 U.S. at 335. The specific interest at stake here is
13 not the government’s ability to continue to detain Petitioner, but rather the government’s ability to
14 continue to detain them for months on end without any individualized review. See *Marroquin*
15 *Ambriz v. Barr*, 420 F. Supp. 3d 953, 964 (N.D. Cal. 2019); *Henriquez v. Garland*, No. 5:22-CV-
16 00869-EJD, 2022 WL 2132919, at *5 (N.D. Cal. June 14, 2022). The cost of providing an
17 individualized inquiry is minimal. See *Henriquez*, 2022 WL 2132919, at *5. The government has
18 repeatedly conceded this fact. See *Lopez Reyes v. Bonnar*, 362 F. Supp. 3d 762, 777 (N.D. Cal.
19 2019); *Singh v. Barr*, 400 F. Supp. 3d 1005, 1021 (S.D. Cal. 2019); *Marroquin Ambriz*, 420 F. Supp.
20 3d at 964.

21 In sum, the *Mathews* factors establish that Petitioner is entitled to an evidentiary
22 hearing before a neutral adjudicator. Unsurprisingly, courts applying these standards in this Circuit
23 have repeatedly held that prolonged detention without a hearing before a neutral adjudicator

1 violates procedural due process. See, e.g., *Romero Romero v. Wolf*, No. 20-CV-08031-TSH, 2021
2 WL 254435, at *2, *5 (N.D. Cal. Jan. 26, 2021) (holding that the petitioner's detention of just over
3 one year without a custody hearing was "not compatible with due process" and granting habeas);
4 *Jimenez*, 2020 WL 510347, at *1, *2, *4 (holding that the petitioner's detention of just over one
5 year without a custody hearing violated his due process rights and granting habeas); *Gonzalez v.*
6 *Bonnar*, No. 18-CV-05321-JSC, 2019 WL 330906, at *1, *5 (N.D. Cal. Jan. 25, 2019) (holding
7 that the petitioner's detention for just over one year without a custody hearing violates his due
8 process rights and granting habeas); see also *Singh v. Garland*, No. 1:23-cv-01043-EPG-HC, 2023
9 WL 5836048, at *6 (E.D. Cal. 2023); *Sho v. Current or Acting Field Office Director*, No. 1:21-cv-
10 01812-TLN-AC, 2023 WL 4014649 (E.D. Cal. 2023). This Court should so hold as well.

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

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

1 Cnty. Corr. Facility, 965 F.3d 203, 210-22 (3d Cir. 2020). The reasonableness inquiry is “highly
2 fact-specific.” Id. at 210. “The most important factor is the duration of detention.” Id. at 211; see
3 also *Gonzalez v. Bonnar*, No. 18-CV-05321-JSC, 2019 WL 330906, at *1, *5 (N.D.

4 Cal. Jan. 25, 2019) (concluding that the petitioner’s detention for just over one year
5 without a custody hearing weighed strongly in favor of finding detention unreasonable, and
6 violated his due process rights and granting habeas). Duration is evaluated along with “all the other
7 circumstances,” including (1) whether detention is likely to continue, (2) reasons for the delay, and
8 (3) whether the conditions of confinement are meaningfully different from criminal punishment.
9 Id. at 211.

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

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

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.

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

1 WL 6232236, at *9 (N.D. Cal. Sept. 25, 2023) (same); *Henriquez v. Garland*, No. 23-CV-01025-
2 AMO, 2023 WL 6226374, at *4 (N.D. Cal. Sept. 25, 2023) (same); *Rodriguez Picazo v. Garland*,
3 No. 23-CV-02529-AMO, 2023 WL 5352897, at *7 (N.D. Cal. Aug. 21, 2023).

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

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

1 minimal cost or inconvenience to it, as the government has access to the noncitizen's immigration
2 records and other information that it can use to make its case for continued detention.

3 **Due Process Requires Consideration Of Alternatives To Detention.**

4 Due process also requires consideration of alternatives to detention. The primary
5 purpose of immigration detention is to ensure a noncitizen's appearance during civil removal
6 proceedings. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related to this purpose if there
7 are alternative conditions of release that could mitigate risk of flight. See *Bell v. Wolfish*, 441 U.S.
8 520, 538–39 (1979) (civil pretrial detention may be unconstitutionally punitive if it is excessive in
9 relation to its legitimate purpose). ICE's alternatives to detention program—the Intensive
10 Supervision Appearance Program—has achieved extraordinary success in ensuring appearance at
11 removal proceedings, reaching compliance rates close to 100 percent. *Hernandez v. Sessions*, 872
12 F.3d 976, 991 (9th Cir. 2017) (observing that ISAP “resulted in a 99% attendance rate at all EOIR
13 hearings and a 95% attendance rate at final hearings”). Thus, alternatives to detention must be
14 considered in determining whether prolonged incarceration is warranted.

15 Due process likewise requires consideration of a noncitizen's ability to pay a bond.
16 “Detention of an indigent ‘for inability to post money bail’ is impermissible if the individual's
17 ‘appearance at trial could reasonably be assured by one of the alternate forms of release.’”
18 *Hernandez*, 872 F.3d at 990 (quoting *Pugh v. Rainwater*, 572 F.2d 1053, 1058 (5th Cir. 1978) (en
19 banc)). Therefore, when determining the appropriate conditions of release for people detained for
20 immigration purposes, due process requires “consideration of financial circumstances and
21 alternative conditions of release.” *Id.*; see also *Martinez v. Clark*, 36 F.4th 1219, 1231 (9th Cir.
22 2022) (“While the government had a legitimate interest in protecting the public and ensuring the
23 appearance of noncitizens in immigration proceedings, we held [in *Hernandez*] that detaining an

1 indigent alien without consideration of financial circumstances and alternative release conditions
2 was 'unlikely to result' in a bond determination 'reasonably related to the government's legitimate
3 interests.' (citation omitted).").

4 Although DHS initially asserted that Petitioner was detained under 8 U.S.C. § 1225(b)
5 and relied on *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), to deny him access to an immigration
6 judge bond hearing, Petitioner's current detention is post-final-order detention governed by 8
7 U.S.C. § 1231(a). See *Zadvydas v. Davis*, 533 U.S. 678, 682–83 (2001). When an immigration
8 judge issues a final order of removal and grants withholding of removal or CAT relief, the order
9 of removal remains final, but its execution is withheld as to the country of persecution; DHS may,
10 in theory, seek removal to a third country under 8 U.S.C. § 1231(b)(2).

11 Regardless of whether Respondents characterize Petitioner's custody as arising under
12 § 1225(b) or § 1231(a), his continued civil detention for more than six months without any
13 individualized custody hearing before a neutral decisionmaker, combined with the lack of any
14 realistic prospect of removal in the reasonably foreseeable future and the harsh, punitive conditions
15 of confinement described above, violates the Due Process Clause of the Fifth Amendment. See
16 *Zadvydas*, 533 U.S. at 690–701; *Johnson v. Guzman Chavez*, 594 U.S. 523, 540–43 (2021).

17 CLAIM FOR RELIEF

18 VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT 19 TO THE U.S. CONSTITUTION

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

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

1 To justify Petitioner's ongoing prolonged detention, due process requires that the
2 government establish, at an individualized hearing before a neutral decisionmaker, that Petitioner's
3 detention is justified by clear and convincing evidence of flight risk or danger, taking into account
4 whether alternatives to detention could sufficiently mitigate that risk.

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

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Petitioner respectfully requests that this Court:

9 Assume jurisdiction over this matter;

10 Enjoin Respondents from transferring Mr. Carballo outside the jurisdiction of the
11 Eastern District of California pending the resolution of this case;

12 Issue a Writ of Habeas Corpus, hold a hearing before this Court if warranted, determine
13 that Petitioner's detention is not justified because the government has not established by clear and
14 convincing evidence that Petitioner presents a risk of flight or danger in light of available
15 alternatives to detention, and order Petitioner's release (with appropriate conditions of supervision
16 if necessary), taking into account Petitioner's ability to pay a bond;

17 In the alternative, issue a Writ of Habeas Corpus and order Petitioner's release within
18 30 days unless Respondents schedule a hearing before an immigration judge where: (1) to continue
19 detention, the government must establish by clear and convincing evidence that Petitioner presents
20 a risk of flight or danger, even after consideration of alternatives to detention that could mitigate
21 any risk that Petitioner's release would present; and (2) if the government cannot meet its burden,

1 the immigration judge shall order Petitioner's release on appropriate conditions of supervision,
2 taking into account Petitioner's ability to pay a bond;

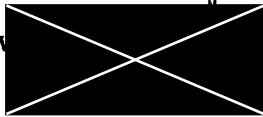
3 Issue a declaration that Petitioner's ongoing prolonged detention violates the Due
4 Process Clause of the Fifth Amendment;

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

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

8 Respectfully submitted

9 Bulat Sambuev

A black rectangular box with a white 'X' drawn across it from corner to corner, used to redact the signature of Bulat Sambuev.

12/7/2025