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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

Rodney Valido Mesa,

Petitioner,

vs.

CHRISTOPHER CHESTNUT, Senior Warden of California City Detention Facility, MOISES BECERRA, Field Officer Director for the San Francisco Immigration and Customs Enforcement Office; DAVID J. VENTURELLA, Acting Director of United States Immigration and Customs Enforcement; MARKWAYNE MULLIN, Secretary of the United States Department of Homeland Security, TODD BLANCHE, Attorney General of the United States, acting in their official capacities,

Respondents.

Case No._____

PETITION FOR WRIT OF HABEAS CORPUS

ORAL ARGUMENT REQUESTED

INTRODUCTION

1. Rodney Valido Mesa ("Petitioner") is an asylum seeker who fled Cuba after experiencing persecution based on his political opinion. Petitioner arrived in the United States on January 15, 2025. Federal agents detained him and have since declined to release him on discretionary parole despite immediate relatives with lawful status in the United States, no criminal or immigration history, and since June 24, 2025 an order by the Immigration Court granting Petitioner withholding of removal. Despite winning protection against removal to Cuba based on persecution he suffered for his political opinion, Petitioner has languished in detention for one and a half years as of this filing. In that year, 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.
2. Petitioner's prolonged detention is causing him tremendous and ongoing harm and violates the Due Process Clause of the Fifth Amendment.
3. 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 flight or danger in light of available alternatives to detention, and order Petitioner's immediate release, with appropriate

conditions of supervision if necessary.

4. Alternatively, Petitioner requests that the Court issue a writ of habeas corpus and order Petitioner's release within 14 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, into account Petitioner's ability to pay bond.

JURISDICTION AND VENUE

5. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201–02 (Declaratory Judgment Act), 28 U.S.C. § 2241 (habeas corpus), Article I, § 9, cl. 2 of the U.S. Constitution (the Suspension Clause), the Fourth and Fifth Amendments to the U.S. Constitution, and 5 U.S.C. §§ 701-706 (Administrative Procedure Act).

6. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(a) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is physically detained within this district.

PARTIES

7. Petitioner is a 21-year-old Cuban national who was granted withholding of removal on June 24, 2025. He is appealing the denial of asylum to the Board of Immigration Appeals (BIA). DHS is not appealing the grant of withholding. He has no criminal history anywhere in the world. He is presently in physical custody of Immigration and Customs Enforcement (ICE) at 22844 Virginia Boulevard, California City, CA 93505.

8. Respondent Christopher Chestnut is the Warden of the California City Correction Facility. He is the physical custodian of the Petitioner. In this capacity, he is responsible for overseeing the operations of California City Detention Facility, including the detention of the Petitioner. Respondent Chestnut is sued in his official capacity.

9. Respondent Moises Becerra is the Field Office Director of the San Francisco ICE Field Office. He is the physical custodian of the Petitioner. In this capacity, he is responsible for the administration of immigration laws and the execution of immigration enforcement and detention policy within ICE's San Francisco Area of Responsibility, including the detention of Petitioner. Respondent Becerra maintains an office and regularly conducts business in this district. Respondent Becerra is sued in his official capacity.

10. Respondent David J. Venturella is the Acting Director of ICE. As the Senior

Official Performing the Duties of the Director of ICE, he is responsible for the administration and enforcement of the immigration laws of the United States; routinely transacts business in this District; and is legally responsible for pursuing any effort to detain and remove the Petitioner. Respondent Venturella is sued in his official capacity.

11. Respondent Markwayne Mullin is the Secretary of Homeland Security and has ultimate authority over DHS. In that capacity and through his agents, Respondent Mullin has broad authority over and responsibility for the operation and enforcement of the immigration laws; routinely transacts business in this District; and is legally responsible for pursuing any effort to detain and remove the Petitioner. Respondent Mullin is sued in his official capacity.

12. Respondent Todd Blanche is the Attorney General of the United States and the most senior official at the Department of Justice. In that capacity and through his agents, he is responsible for overseeing the implementation and enforcement of the federal immigration laws. The Attorney General delegates this responsibility to the Executive Office for Immigration Review, which administers the immigration courts and the BIA. Respondent Blanche is sued in his official capacity.

FACTUAL ALLEGATIONS

13. Mr. Valido Mesa is a twenty-one-year-old Cuban citizen and native. He fled Cuba after he was violently arrested, detained for a month, beaten, [redacted] due to his political opposition to the Cuban government. *See* Exhibit A; *see also* Valido Decl. Prior to his arrest in Cuba, Mr. Valido Mesa lived with his mother and was finishing his schooling to become a physical education teacher. *Id.* Mr. Valido Mesa has no criminal history anywhere in the world.

14. Mr. Valido Mesa fled Cuba in November of 2024, and travelled to Mexico with the intent of seeking asylum in the United States, where his brother and sister were living. *See* Valido Decl. Soon after crossing into Mexico, Mr. Valido Mesa was kidnapped by cartel members and held captive for three days. *Id.* He witnessed the cartel kill the bus driver and severely beat several of the other migrants who were kidnapped. *Id.* Upon release, he was told he would not be as lucky if the cartel found him again in Mexico. Mr. Valido Mesa fled to Tijuana, and with the assistance of a smuggler, crossed the border without inspection on January 15, 2025. *Id.* He immediately turned himself into immigration officials and indicated his intent to apply for asylum. *Id.*

15. Mr. Valido Mesa was interviewed by an asylum officer on January 17, 2026

and found to have credible fear of return to Cuba based on past persecution he suffered at the hands of the Cuban government. *Id.*

16. Mr. Valido Mesa appeared in the Otay Mesa Immigration Court with pro bono counsel and submitted his form I-589 along with documentary evidence detailing the violent arrest, beating, [redacted] he experienced after protesting the Cuban government. *Id.*

17.17. Around the same time, through counsel, Mr. Valido Mesa requested release from detention on parole. *See* Exhibit B. Mr. Valido Mesa provided proof of his immediate family member in Tampa, Florida, who has lawful permanent residency, housing, income, and who pledged support to Mr. Valido Mesaduring the pendency of removal proceedings. *Id.* Mr. Valido Mesa pointed out to ICE officers in this request that he has no criminal history, no prior immigration history, and that his asylum claim was found to be bona fide by an asylum officer.

18. ICE officers did not respond to this parole request until May 31, 2025, approximately 3 weeks before Mr. Valido Mesa's final hearing on his asylum application. This is in despite of ICE directive requiring officers to provide written notification of parole decision "within seven days of...the date the [non-citizen] requests a parole redetermination." *See* ICE Directive 11002.1. ICE officers refused to release Mr. Valido Mesa on parole,

justifying their decision with a single sentence saying there was "no basis for humanitarian release." *See* Exhibit C.

19. On June 24, 205, Mr. Valido Mesa appeared before the Otay Mesa Immigration Court and testified in support of his application for asylum. *See* Exhibit A. The IJ found Mr. Valido Mesa to be credible, found that he had suffered past persecution on account of his political opinion, and that he had a well-founded fear of future persecution on that basis. *Id.* However, the IJ denied asylum based on the regulation in place limiting asylum eligibility to those who entered the country with CBPOne appointments. *Id.* at 3, citing the Circumvention of Lawful Pathways bar found at 8 C.F.R. § 208.33.

20. The IJ found that Mr. Valido Mesa had met his burden of proof to warrant a grant of withholding of removal. *See* Exhibit A. The IJ entered an order of removal to Cuba, but withheld removal based on the finding that Mr. Valido Mesa would more likely than not be subjected to persecution in Cuba for his political opinion. *Id.* Mr. Valido Mesa reserved appeal, and DHS waived appeal. *Id.*

21. On December 10, 2025, almost a year after Mr. Valido Mesa's initial entry into the United States and almost 6 months after he was granted withholding of removal, Mr. Valido again requested discretionary parole from ICE. *See* Exhibit D. This request was denied on January 13, 2026 with the

justification simply stating that Mr. Valido Mesa's case as "pending BIA appeal." *See* Exhibit E.

22. Mr. Valido Mesa received the decision dismissing his appeal to the BIA on February 24, 2026. He timely filed a Petition for Review with the Ninth Circuit Court of Appeals, challenging the application of the CLP rule in his denial of asylum. The CLP rule has since been vacated as unlawful and procedurally defective. *See East Bay Sanctuary Covenant v. Trump,* No.18-cv-06810-JST Dkts. 226, 228 (N.D. Cal. June 3, 2026).

23. On May 26, 2026, Mr. Valido Mesa was served a "Notice to Alien of File Custody Review." *See* Exhibit H. In preparation for the custody review scheduled for June 30, 2026, Mr. Valido Mesa again provided ICE a parole request with several United States citizen sponsors, proof of ties to the community, and proof that he presented no danger to the community. *See* Exhibit I. Mr. Valido has not received a decision on this file review as of the date of this filing.

24. DHS has on three separate occasions denied Petitioner's request for parole, without including the factual basis for finding that Petitioner is a flight risk or a danger to the community. *See* Exhibits B-E, H, I. Petitioner is ineligible for a bond hearing before an IJ under BIA precedent and thus has pursued all avenues for release unsuccessfully. *See* Exhibit G.

25. Mr. Valido Mesa has now languished in detention for approximately eighteen months since his initial entry into the United States, despite the fact that he was granted withholding of removal more than a year ago and was denied asylum solely due to a regulation that has since been vacated. He was transferred to California City Detention Facility on May 31, 2026, where he continues to experience detention conditions akin to prison or jail.

EXHAUSTION

26. Petitioner is not required to exhaust administrative remedies. Exhaustion for habeas claims is prudential, not jurisdictional. *See Laing v. Ashcroft*, 370 F.3d 994, 997 (9th Cir. 2004); *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). Even prudential exhaustion is not required if "'administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, [or] irreparable injury will result.'" *Laing*, 370 F.3d at 1000; *see also Hernandez*, 872 F.3d at 988.

27. Petitioner has submitted three parole requests to ICE-ERO, all of which have been summarily denied or ignored. *See* Exhibits B-E, H, I. As an asylum applicant detained pursuant to INA § 235(b)(1)(B)(ii), parole pursuant to INA § 212(d)(5)(A) is the only means by which he may be released. *See Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019).

28. Additionally, Petitioner filed a motion for a bond redetermination hearing after his appeal to the Board of Immigration Appeals was dismissed. The Immigration Judge refused to consider the motion, finding that the Immigration Court lacked jurisdiction under INA § 235(b)(1)(B)(ii). *See* Exhibit G.

29. Thus, Petitioner has exhausted the administrative remedies available to him. Any further requirement of exhaustion would be futile and result in irreparable injury to Petitioner.

LEGAL FRAMEWORK

30. Petitioner is being deprived of his liberty without any permissible justification. The government has not alleged any basis for a finding that Petitioner is a risk of flight or danger to the community to warrant detention. Generally, a showing of deprivation of constitutional rights is sufficient to show irreparable harm. *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012), *citing Elrod v. Burns,* 427 U.S. 347, 373, 96 S. Ct. 2673, 49 L.Ed.2d 547 (1976).

31. The Constitution establishes due process rights for "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Hernandez v. Sessions*, 872 F.3d 976,

990 (9th Cir. 2017) (*quoting Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)). Indeed, all non-citizens within the United States are afforded substantive and procedural due process rights under the Constitution. *Zadvydas*, 533 U.S. at 693.

32. First, "[t]he touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including "the exercise of power without any reasonable justification in the service of a legitimate government objective," *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998).

33. These protections extend to noncitizens facing detention, as "[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987). Accordingly, "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.

I. Petitioner's Prolonged Detention is Punitive and Violates the Substantive Due Process Clause.

34. Substantive due process thus requires that all forms of civil detention—including immigration detention—bear a "reasonable relation" to a non-

punitive purpose. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972). The Supreme Court has recognized only two permissible non-punitive purposes for immigration detention: ensuring a noncitizen's appearance at immigration proceedings and preventing danger to the community. *Zadvydas*, 533 U.S. at 690–92; *see also Demore v. Kim*, 538 U.S. 510 at 519–20, 527–28, 31 (2003).

35. In *Demore*, the Supreme Court rejected a facial due process challenge to categorical no-bond detention under Section 1226(c) and upheld "brief" detention under Section 1226(c) on the misinformed understanding that it lasts "an average … of 47 days" in the "vast majority" of cases and otherwise rarely exceeds five months. *Demore*, 538 U.S. at 529-30. Yet *Demore* but did not disturb the longstanding principle that civil detention cannot be punitive and did not consider the constitutionality of mandatory detention that had become prolonged.

36. Even civil detention that begins as constitutionally acceptable may become unconstitutionally punitive when it exceeds a particular duration. "[A]s the period of... confinement grows," greater justification is needed "for detention to remain reasonable." *Zadvydas*, 533 U.S. at 701; *see also id.* at 690 ("A statute permitting indefinite detention of [a noncitizen] would raise a serious constitutional problem"); *Salerno*, 481 U.S. at 747, n.4

(recognizing there may be "[a] point at which detention in a particular case might become excessively prolonged, and therefore punitive, in relation to Congress' regulatory goal"); *Jackson*, 406 U.S. at 733 (expressing "substantial doubt" that statutes authorizing pretrial detention of incompetent criminal defendants "could survive constitutional scrutiny if interpreted to authorize indefinite commitment"); *McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249-50 (1972) (upholding "short-term confinement with a limited purpose;" however, "by the same token, the duration of the confinement must be strictly limited" to adhere with due process); *Schall*, 467 U.S. at 269-70 (finding pre-trial detention of juveniles non-punitive because it was "strictly limited in time" and the maximum possible detention was 17 days).

37. Here, Petitioner's detention is "'excessive in relation to [its non-punitive] purpose'" because he does not pose a risk of flight or danger to the community that can justify the 18 months he has spent and continues to spend in civil incarceration. *Jones*, 393 F.3d at 934 (internal citation omitted); see also *Salerno*, 481 U.S. at 747 (determining whether a restriction on liberty is punitive requires considering "whether it appears excessive in relation to the [non-punitive] purpose" (quoting *Schall v. Martin*, 467 U.S. 253, 269 (1984)).

A. Petitioner Does Not Pose a Flight Risk or Danger to the Community

38. Petitioner, having won Withholding of Removal and pending review of his asylum application, does not pose any flight risk. Petitioner has two siblings in the United States, one of which has legal permanent resident status and sufficient income to support Petitioner. *See* Valido Decl. Petitioner does not face risk of removal to Cuba, where he fears persecution. Petitioner is committed to continuing his pursuit of asylum before the Ninth Circuit Court of Appeals with pro bono counsel. *See* Valido Decl. Studies show that 96% or 97% of non-detained immigrants with a lawyer attend all their hearings, and alternatives to detention have "resulted in a 99% attendance rate at all EOIR hearings and a 95% attendance rate at final hearings."[1] Indeed, the

[1] *See* American Immigration Council, Measuring In Absentia Removal in Immigration Court (Jan. 2021), https://www.americanimmigrationcouncil.org/sites/default/files/research/measuring_in_absentia_in_immigration_court.pdf; American Immigration Council, Immigrants and Families Appear in Court (Jul. 2019), https://www.americanimmigrationcouncil.org/research/immigrants-and-families-appear-court; *Hernandez*, 872 F.3d at 991 .

record is devoid of any evidence that would indicate that Petitioner would abscond from proceedings.

39. Petitioner does not pose a danger to the community. Petitioner has never been charged or convicted of a crime, and his only arrest occurred in Cuba and is the basis of his asylum claim. Prior to fleeing Cuba, Petitioner was a physical education teacher. He lived with his mother in La Habana, Cuba. Petitioner will have family support upon release into the United States.

B. Petitioner's 18 Months of Physical Custody, Under Conditions Equal or Worse to Criminal Custody, is Punitive.

40. Even if Petitioner did pose some risk of flight or danger, the 18 months and counting he has spent in detention, under conditions equal or worse to criminal custody, is not proportional to that supposed risk. Moreover, any such risk can be sufficiently mitigated by far less restrictive measures than continued physical custody. *See Perez v. Wolf*, 445 F. Supp. 3d 275, 291, 295 (N.D. Cal. 2020) (upholding IJ's finding of dangerousness and nonetheless ordering release from immigration detention on conditions of release based on substantive due process claim); *Ortuño v. Jennings*, No. 20-cv-02064-MMC, 2020 WL 1701724, at *4 (N.D. Cal. Apr. 8, 2020) (holding that physical custody was "excessive in relation" to DHS's undisputed

interest in preventing flight risk and ordering release from immigration detention on conditions of release based on substantive due process claim); *Doe v. Barr* (*Doe v. Barr II*), No. 20-cv-02263-RMI, 2020 WL 1984266, at *6 (N.D. Cal. Apr. 27, 2020) (same).

41. In the context of pre-trial detention in the criminal context, another form of civil custody, the Supreme Court in *Salerno* made clear that otherwise permissible detention violated the Due Process Clause once it becomes prolonged in relation to its purpose. 481 U.S. at 747 n.4. The Ninth Circuit has likewise stated that, "at some point, regardless of the risks … due process will require that [a person subject to prolonged civil confinement] be released." [5] *United States v. Torres*, 995 F.3d 695, 709-10 (9th Cir. 2021) (noting that "all parties"—including the federal government—conceded this point); *see also United States v. Briggs*, 697 F.3d 98, 103 (2d Cir. 2012) ("[F]or every set of circumstances, due process does impose some limit [on civil confinement]."). Applying *Salerno*, the Ninth Circuit in *Torres* held that twenty-one months of pre-trial detention "is approaching the limits of what due process can tolerate" for a defendant awaiting trial who had multiple prior convictions including for violent offenses, and a history of failing to appear in court. 995 F.3d at 709-10. Importantly, in *Torres* and other post-*Salerno* jurisprudence, the petitioners had *already* received an

individualized hearing to determine whether they posed a flight risk or danger to the community, and whether "no bail conditions would reasonably assure [their] appearance at court hearings and the safety of the community"—an inquiry that no adjudicator has yet made in Petitioner's case. *See Torres*, 995 F.3d at 700 (referring to provisions of Bail Reform Act at 18 U.S.C. § 3142(c)).[2]

42. Multiple courts have declared unconstitutional periods of confinement shorter than or similar to Petitioner's 18 months in detention. *See, e.g.*, *Gao v. LaRose,* 2025 WL 2770633 (S.D. Cal. 2025) (holding 10 month detention period in light of Petitioner's grant of withholding of removal was unreasonable and violated due process); *United States v. Theron*, 782 F.2d 1510, 1516 (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, 343 (2nd Cir. 1986) (holding fourteen-month detention unconstitutional and recognizing that "[d]etention that has lasted for fourteen months and, without speculation, is

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[2] Pretrial confinement, like immigration detention, is subject to the constraints of the Due Process Clause. *See Bell v. Wolfish*, 441 U.S. 520, 535-36 (1979); *Doe v. Kelly*, 878 F.3d 710, 714 (9th Cir. 2017) (upholding district court decision applying *Bell* and its progeny to civil immigration detention).

scheduled to last considerably longer, points strongly to a denial of due process"); *United States v. Zannino*, 798 F.2d 544, 548 (1st Cir. 1986) (denying release on unique facts of case but recognizing that "assum[ing] that in many, perhaps most, cases, sixteen months would be found to exceed the due process limitations on the duration of pretrial confinement"); *United States v. Chen*, 820 F. Supp. 1205, 1210 (N.D. Cal. 1992) (one year detention unconstitutional); *United States v. Lofranco*, 620 F. Supp. 1324, 1326 (N.D.N.Y. 1985) (six-month detention unconstitutional).

43. The liberty interest of a person subjected to prolonged civil confinement eventually becomes dispositive, such that *no* degree of government interest can outweigh it. But the Court need not reach the issue here, because conditions of release can sufficiently protect against any conceivable government interest.

44. The punitive and impermissible nature of Petitioner's detention is also supported by the fact that his detention at California City Detention Facility has been indistinguishable from the conditions of criminal custody. Due process prohibits conditions of civil detention that are the same as or worse than criminal custody. *King v. Cty. Of Los Angeles*, 885 F.3d 548, 556-57 (9th Cir. 2018). Petitioner has been subjected to unlivable and inhumane conditions at California City Detention Facility. Petitioner is

fed inedible food and is only provided a few minutes to eat his entire meal. His ability to pay for somewhat better food, albeit costly, at the commissary is dependent on his family's support.

45. Petitioner's prolonged detention is further unjustified because any risk of flight or danger can be successfully mitigated with less restrictive measures than physical custody. In other words, the government's objectives can be accomplished through "alternative and less harsh methods," including reasonable conditions of supervision upon release. *Jones*, 393 F.3d at 932.

46. Immigration authorities already claim to have developed and successfully implemented programs to supervise individuals while their removal proceedings remain pending. ICE's Intensive Supervision Appearance Program ("ISAP"), for example, has achieved near-perfect compliance with court obligations. *See Hernandez*, 872 F.3d at 991 (ISAP "resulted in a 99% attendance rate at all EOIR hearings and a 95% attendance rate at final hearings").

47. Such alternative supervision programs are also significantly less costly than continued incarceration. According to a recent Congressional report, the daily cost of detention in fiscal year 2018 was $137 per day, compared to

$4.16 per day for the Intensive Supervision Appearance Program.[3]

48. Under that data, the government has already spent over $94,000 to house, feed and provide 24-hour staffing to detain Petitioner for over 18 months. Petitioner's release from custody would significantly reduce the government's added burden on taxpayers for the duration of his case, which could continue for months or years into the future. Because the conditions of Petitioner's release will successfully protect any conceivable governmental interest, his continued detention is unconstitutionally punitive.

49. Petitioner has already been subject to detention for over 18 months and is expected to remain in detention for at least several more months, and possibly years, if his case is remanded and if either side appeals after a new decision on remand. Petitioner is likely to ultimately succeed on review by the Ninth Circuit given the recent nationwide vacatur of the CLP Rule, which is the exclusive basis of the denial of asylum. *See East Bay Sanctuary Covenant v. Trump,* No. 4:18-cv-06810-JST, Dkt. 231 (N.D. Cal. June 3, 2026).

50. Because Petitioner has ties and a strong support system in the United States,

[3] Congressional Research Service, "Immigration: Alternatives to Detention (ATD) Programs," at 15 (July 8, 2019), available at https://fas.org/sgp/crs/homesec/R45804.pdf.

has won relief from removal from Cuba with a strong likelihood of winning asylum, has no criminal history or prior immigration history, the length and conditions of his confinement are not proportional to any risk he currently poses.

C. This Court Has Authority to Order Immediate Release as a Remedy to a Substantive Due Process Violation.

51. If the Court finds that Petitioner's continued detention is punitive and violates substantive due process, the proper remedy is to order immediate release.

52. That remedy is well within the Court's habeas power. The federal habeas statute directs district courts to "hear and determine the facts" of a habeas petition and to "dispose of the matter as law and justice require." 28 U.S.C. § 2243; *see also Hilton v. Braunskill*, 481 U.S. 770, 775 (1987) (explaining that as far back as the nineteenth century, "the Court interpreted the predecessor of § 2243 as vesting a federal court 'with the largest power to control and direct the form of judgment to be entered in cases brought up before it on habeas corpus'") (quoting *In re Bonner*, 151 U. S. 242, 261 (1894)).

53. In immigration habeas cases, courts regularly order release upon determining that detention violates substantive due

process. *See, e.g.*, *Lawson v. Gerlinski*, 332 F. Supp. 2d. 735, 744-45 (M.D. Pa. 2004) (concluding that petitioner's prolonged immigration detention violated substantive due process and ordering release); *Oyedeji v. Ashcroft*, 332 F. Supp. 2d 747, 752 (M.D. Pa. 2004) (same); *Nunez-Pimentel v. ICE*, No. 1:07-CV-1915, 2008 WL 2593806, at *5 (M.D. Pa. June 27, 2008) (same); *see also Ekeh v. Gonzales*, 197 F. App'x 637, 638 (9th Cir. 2006) (ordering supervised release pursuant to *Zadvydas*); *Bah v. Cangemi*, 489 F. Supp. 2d 905, 919 (D. Minn. 2007) (same); *Nguyen v. Fasano*, 84 F. Supp. 2d 1099, 1113 (S.D. Cal. 2000) (issuing order to show cause why petitioner should not be released pursuant to *Zadvydas*). Indeed, district courts in this Circuit have regularly ordered release when conditions of confinement are excessive in relation to a detained person's risk of flight or danger to the community. *See, e.g.*, *Bent v. Barr*, 445 F.Supp.3d 408, 414-415, 421 (N.D. Cal. 2020); *Doe v. Barr*, No. 20-cv-02141-LB, 2020 WL 1820667, *8-*10 (N.D. Cal. Apr. 12, 2020); *Ortuño v. Jennings*, No. 20-cv-02064-MMC, 2020 WL 1701724, *3-*5 (N.D. Cal. Apr. 8, 2020); *Doe v. Barr*, No. 20-cv-02263-RMI, 2020 WL 1984266, *6-*7 (N.D. Cal. Apr. 27, 2020).

54. Under such circumstances, district courts may impose conditions of release to manage the governmental interests at stake. *See, e.g.*, *Ortuño*, 2020 WL 1701724, *5 (setting conditions of release); *Zepeda Rivas v. Jennings*, No.

20-CV-02731-VC, 465 F. Supp. 3d 1028, 1036 (N.D. Cal. 2020) (citing inherent habeas authority to release on bail), Dkt. 543 (setting multiple conditions of release); Dkt. 471 (conditioning release on attendance at group sobriety meetings); Dkt. 492 (conditioning release on placement in transitional housing facility); Dkt. 246 (conditioning release on several individualized conditions related to alcohol consumption); Dkt. 42 (conditioning release on admission to residential drug treatment facility). This Court has authority to craft such appropriate conditions, so long as the conditions otherwise satisfy constitutional safeguards. *See Hernandez*, 872 F.3d at 990-91 ("'[I]nability to post money bail'" violates due process "if the individual's 'appearance at trial could reasonably be assured by one of the alternate forms of release.'" (quoting *Pugh v. Rainwater*, 572 F.2d 1053, 1058 (5th Cir. 1978) (en banc))).

55. Recently, district courts have ordered immediate release from custody in lieu of ordering bond hearings for prolonged detention cases where petitioners were provided "sham" bond hearings. *See, e.g., Tiboko-Tifuh v. Noem,* 2026 WL 1603795 (S.D. Cal. June 4, 2026); *Lin v. Noem,* No. 3:26-cv-00807-JO-DEB, Dkt. 27 (S.D. Cal. Apr. 20, 2026); *Miri v. Bondi,* 2026 WL 622302 (C.D. Cal. Mar. 5 (2026). Courts have also bypassed the intermediary relief of a bond hearing altogether upon "mounting evidence that bond

determination hearings conducted in Immigration Court...have preordained outcomes." *See e.g. Mubanga v. Mullin,* 2026 WL 1945743 (S.D. Cal. July 6, 2026) (citing *Singh v. Valdez.* 2026 WL 890240, at *5 (D. Colo. Apr. 1, 2026).

56. Here, because Petitioner's prolonged detention is excessive, punitive, and unnecessary in relation to any governmental interest, the Court must order his release in lieu of a bond hearing to avoid further unlawful detention.

II. Petitioner' Prolonged Detention Without An Individualized Determination Violates Procedural Due Process.

57. Because Petitioner is subject to punitive civil incarceration in violation of substantive due process, this Court need not reach the question of whether his detention also violates procedural due process. However, if the Court does reach the issue, the Court should find that Petitioner's prolonged and ongoing detention without any individualized evaluation of the government's asserted justification for confinement violates procedural due process. *See Zadvydas*, 533 U.S. at 693 (2001) (citations omitted). Mr. Valido Mesa is thus entitled to a prompt, evidentiary custody hearing by this Court, which must "hear and determine the facts" of his habeas petition and "dispose of the matter as law and justice require." 28 U.S.C. § 2243.

58. Multiple courts have declared unconstitutional periods of confinement shorter than or similar to Mr. Valido Mesa's 18 months in detention. *See Abdul-Samed v. Warden of Golden State Annex Det. Facility,* 2025 WL 2099343 (E.D. Cal. 2025) ("essentially all district courts that have considered the issue agree that prolonged mandatory detention pending removal proceedings, without a bond hearing will—at some point—violation the right to due process."); *see also Lopez v. Garland,* 631 F.Supp.3d 870 (E.D. Cal. 2022) (holding that one year of detention without a bond hearing was unreasonably prolonged); *see also Palencia v. Warden of Golden State Annex Det. Facility,* 2026 WL 818580 (E.D. Cal. 2026) (8 months of detention without a bond hearing violated procedural due process.)

A. Petitioner Is Entitled to a Custody Hearing Because His Detention Has Exceeded Six Months.

59. As previously discussed, civil immigration detention without *individualized* review and justification becomes prolonged at six months. The recognition that six months is a substantial period of confinement, after which additional process is required to justify continued incarceration, is deeply rooted in our legal tradition. With few exceptions, "in the late eighteenth 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, 88 S. Ct. 1444, 1454 (1968). Consistent with this tradition, the Supreme Court has recognized that six months is a meaningful benchmark in various contexts where a person's liberty is at stake. *See, e.g.*, *United States v. Nachtigal*, 507 U.S. 1, 5 (1993) (characterizing as "severe" the "loss of liberty caused by imprisonment for more than six months"); *Blanton v. North Las Vegas, Nev.*, 489 U.S. 538, 542-43 (1989) (reasoning that because "the loss of liberty" from incarceration is so "sever[e]" and "an 'intrinsically different' form of punishment," additional procedural safeguards after six months are necessary); *Taylor v. Hayes*, 418 U.S. 488, 495-96 (1974) (holding that states may not impose sentences exceeding six months without a jury trial).

60. The Supreme Court has also extended this six-month line to the civil context in a case setting out procedural requirements for civil commitments related to mental health. *See McNeil*, 407 U.S. at 249-52.

In *McNeil*, the Court held that due process requires the duration of even shorter-term confinements to be "strictly limited," and that the six-month limit for civil commitments without an individualized inquiry originally laid out by the relevant statute "provides a useful benchmark." *Id.* at 249-50.

61. The Ninth Circuit applied the six-month line to immigration detention, holding that when "detention crosses the six-month threshold and release or

removal is not imminent," "a hearing before a neutral decision maker" is a "reasonable" procedural safeguard. *Diouf II*, 634 F.3d at 1092; *see also Nadarajah v. Gonzales,* 443 F.3d 1069, 1079-80 (holding that "detention must be for a reasonable period, and only if there is a 'significant likelihood of removal in the reasonably foreseeable future.") In *Nadarajah*, the Ninth Circuit rejected the government's contention that DHS had authority to detain indefinitely under 8 U.S.C. § 1225(b)(1)(B)(ii) and (b)(2)(A). *Id.* at 1076. There, the Petitioner similarly had been granted relief from removal but continued to be detained pending review of the grant of asylum by the Attorney General. *Id.* The Ninth Circuit concluded that, consistent with *Zadvydas,* the general immigration detention statutes permit detention "only while removal remains reasonably foreseeable." *Id.* at 1078. Thus, "after a presumptively reasonable six-month detention, 'once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing.'" *Id.*, citing *Zadvydas,* 533 U.S. at 701.

62. Because ICE has already detained Petitioner for more than 18 months—over three times the six-month presumptively reasonable time frame, Petitioner is clearly entitled to a prompt, individualized inquiry into the justification for his detention by a neutral arbiter, if not immediate

release. *See Nadarajah,* 443 F.3d at 1080.

B. Under the Mathews Balancing Test or a Multi-Factor Approach, Petitioner Is Entitled to a Bail Hearing Because his Detention is Unreasonably Prolonged.

63. Even if a bright-line six-month rule was inapplicable, Petitioner's continued detention, without *any* individualized review, is unreasonable under the three-part *Mathews* test and the additional factors considered by the Third Circuit in *German-Santos*. *See Mathews*, 424 U.S. at 335; *German Santos v. Warden Pike Correctional Facility*, 965 F.3d 203, 211 (3d Cir. 2020).

1. Petitioner is entitled to an individual determination under the *Mathews* balancing test.

64. The *Mathews* test balances (1) the private interest threatened by governmental action; (2) the risk of erroneous deprivation of such interest and the probable value of additional procedural safeguards; and (3) the government interest. 424 U.S. at 335. Numerous courts applying the *Mathews* test have found that prolonged detention without an individualized hearing violates procedural due process. *See, e.g.*, *Jimenez*, 2020 WL 510347, *1, 3-4 (N.D. Cal. Jan. 30, 2020) (applying the *Mathews* test where the petitioner had been detained for over a year and

ordering the government to "release [the petitioner] from custody or provide him with a bond hearing"); *Perera*, 598 F. Supp. 3d at 745-46 (N.D. Cal. Apr. 15, 2022) (applying the *Mathews* test where the petitioner was at risk of being re-detained under § 1226(c) and holding that the petitioner was "entitled to a post-deprivation bond hearing should ICE re-detain him").

65. Because Petitioner has *never* received any individualized evaluation of his detention, the *Mathews* factors clearly weigh in his favor and require that this Court promptly hold a bail hearing to evaluate whether Respondents can justify his continued detention.

66. First, Petitioner's private interest in his liberty, the main private interest here, is "unquestionably substantial." *Martinez Leiva v. Garland*, 3:23-cv-02027-CRB, Dkt. 15 at 13 (quoting *Singh*, 638 F.3d at 1208). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due Process Clause] protects." *Zadvydas*, 533 U.S. at 690. Petitioner "has an overwhelming interest here—regardless of the length of his immigration detention—because 'any length of detention implicates the same' fundamental rights." *Perera v. Jennings*, No. 21-cv-04136-BLF, 2021 WL 2400981, at *4 (N.D. Cal. June 11, 2021) (citation omitted).

67. Petitioner's private interest is particularly strong because the length of

his detention is significant. ICE has already imprisoned Petitioner for over 18 months, and neither release nor removal are expected anytime soon, as Petitioner continues to mount a good faith defense to removal. *See Zadvydas,* 533 U.S. at 701 (strength of liberty interest increases as period of confinement grows); *Diouf II*, 634 F.3d at 1091-92 ("When detention crosses the six-month threshold and release or removal is not imminent, the private interests at stake are profound."). Petitioner's time in civil detention is now 12 times the length of the "brief" six-week detention contemplated by the Supreme Court in *Demore*. *See Demore*, 538 U.S. at 523, 530 (citing an average detention length of one and a half months for cases that do not involve an appeal). His confinement is likely to continue for many more months, if not years. *See supra* at ¶¶ 53-54; *see also Portillo v. Hott*, 322 F. Supp. 3d 698, 708 (E.D. Va. 2018) (holding that the petitioner's "fourteen-month detention weighs heavily in his favor as a prolonged and substantial burden on his liberty interest" and that finding was "enhanced by the potential for significant additional proceedings," including an estimate of "at least six additional months")

68. Petitioner's private interest is further strengthened by the conditions of his civil detention at California City Detention Facility. CCDF is partially operated as a federal prison and the conditions at CCDF for civil detainees

remain equally punitive. *See supra* at ¶¶ 34-36, 83; *Gonzalez v. Bonnar*, No. 18-cv-0531-JSC, 2019 WL 330906, at *5 (N.D. Cal. Jan. 25, 2019) ("[C]ourts consider the conditions of the [noncitizen's] detention because [noncitizens] held under § 1226(c) are subject to civil detention rather than criminal incarceration." (quoting *Muse v. Sessions*, 409 F. Supp. 3d 707, 717 (D. Minn. 2018)); *Martinez v. Clark*, No. C18-1669-RAJ-MAT, 2019 WL 5968089, at *9 (W.D. Wash. May 23, 2019) ("[T]he more that "conditions under which the [noncitizen] is being held resemble penal confinement, the stronger his argument that he is entitled to a bond hearing." (citation omitted)).

69. Finally, Petitioner's liberty interest is particularly profound because of his ties to the United States, which must be afforded weight under the *Mathews* test. *See Landon*, 459 U.S. at 34 (in applying the first *Mathews* factor, weighing the right to "rejoin [one's] immediate family" as "rank[ing] high among the interests of" a detained individual with longstanding ties to the U.S.); *id.* (recognizing the "right 'to stay and live and work in this land of freedom'" (citation omitted)). Petitioner's ties to the United States heighten his interest in being at liberty, in the company of his family and community, while his immigration proceedings continue. *See* Valido Decl., ¶ 1-2; Exhs. B, D, I (letters of support from

family members and others who support Petitioner)

70. Second, the risk of erroneous deprivation and the probable value of additional procedural safeguards also weigh heavily in Petitioner's favor. "[T]he risk of an erroneous deprivation of liberty in the absence of a hearing before a neutral decisionmaker is substantial." *Diouf II*, 634 F.3d at 1092. The risk that Petitioner has been erroneously deprived of his liberty is significantly high because he has been detained for over 18 months without any individualized inquiry into whether the government can justify his detention based on the current risk of flight or danger. *See Zadvydas* at 690 (permissible purposes for immigration detention are risk of flight or danger to the community). Conversely, "the probable value of additional procedural safeguards—an individualized evaluation of the justification for his detention—is high, because Respondents have provided virtually no procedural safeguards at all." *Jimenez*, 2020 WL 510347, at *3 (granting habeas petition for person who had been detained for one year without a bond hearing); *see also Perera*, 2021 WL 2400981, at *4 ("[T]he value of providing Perera with a hearing is high."). Moreover, "[t]hat there is no remotely certain end in sight to [Petitioner's] custody only raises the risk of erroneous deprivation." *Perera*, 2021 WL 2400981, at *4.

71. Third, the government's interest in continuing to detain Petitioner without any individualized, neutral review is very weak. The government's interest at stake here is not its ability to continue to detain Petitioner, but rather the government's ability to continue to detain him *for 12 months on end without any individualized review*. *See Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 964 (N.D. Cal. 2019); *Lopez Reyez v. Bonnar*, 362 F. Supp. 3d 762, 777 (N.D. Cal. 2019); *Singh v. Barr*, 400 F. Supp. 3d 1005, 1021 (N.D. Cal. 2019); *Henriquez*, 2022 WL 2132919, at *5 ("[T]he Government's interest in detaining Petitioner without providing an individualized bond hearing is low.").

72. The cost of providing an individualized inquiry is also minimal. *See Marroquin Ambriz*, 420 F. Supp. 3d at 964; *Lopez Reyez*, 362 F. Supp. 3d at 777; *Singh*, 400 F. Supp. 3d at 1021; *Henriquez*, 2022 WL 2132919, at *5.

73. In any event, it is "always in the public interest to prevent the violation of a party's constitutional rights." *See Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Sammartano v. First Judicial Dist. Court*, 303 F.3d 959, 974 (9th Cir. 2002)); *cf. Doe v. Kelly*, 878 F.3d 710, 718 (9th Cir. 2017) ("[T]he 'government suffers no harm from an injunction that merely ends unconstitutional practices and/or ensures that constitutional standards are implemented.'" (quoting *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th

Cir. 2013)). "Requiring the government to provide [Petitioner] a bond hearing does not meaningfully undermine the government's interest in detaining non-citizens who pose a danger to the community or are a flight risk." *Perera*, 2021 WL 2400981, at *5; *see also Hernandez*, 872 F.3d at 994 ("[T]he government has no legitimate interest in detaining individuals who have been determined not to be a danger to the community and whose appearance at future immigration proceedings can be reasonably ensured by a lesser bond or alternative conditions.").

74. Applying these standards, courts in this District and Circuit have repeatedly held that continued detention violates procedural due process for individuals who were held under the same detention statute, and for similar or less time, than Petitioner. *See, e.g.*, *Romero Romero*, 2021 WL 254435, at *1-2, *5 (holding that the petitioner's detention under Section 1226(c) for approximately 13 months without a custody hearing was "not compatible with due process" and granting habeas petition); *Jimenez*, 2020 WL 510347, at *1, *4 (same where petitioner was detained for just over 12 months); *Gonzalez*, 2019 WL 330906, at *1, *2 (same); *Martinez*, 2019 WL 5968089, at *1, *2 (same); *De Paz Sales v. Barr*, No. 19-CV-04148-KAW, 2019 WL 4751894, at *6 (N.D. Cal. Sept. 30, 2019) (same where petitioner was detained for approximately 14 months).[8] This Court should so hold as well.

75. *Rodriguez Diaz v. Garland* 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 another detention statute, Section 1226(a), did not violate procedural due process. 53 F.4th 1189, 1203 (9th Cir. 2022). Unlike Section 1226(c), Section 1226(a) mandates that detained individuals receive an individualized bond hearing at the outset of detention and guarantees further bond hearings upon a material change in circumstances. *See* 8 C.F.R. § 1236.1; 1003.19(e). The panel's decision in *Rodriguez Diaz*—and its evaluation of the underlying *Mathews* factors—was predicated on the immediate and ongoing availability of this administrative process under Section 1226(a). *See Rodriguez Diaz*, 53 F.4th at 1202 ("Section 1226(a) and its implementing regulations provide extensive procedural protections that are unavailable under other detention provisions, including several layers of review of the agency's initial custody determination, an initial bond hearing before a neutral decisionmaker, the opportunity to be represented by counsel and to present evidence, the right to appeal, and the right to seek a new hearing when circumstances materially change"); *see also id.* at 1207, 1209 (initial bond hearing and availability of future bond hearings reduced petitioner's private interest, sufficiently protected his liberty interest, and sufficiently mitigated risk of erroneous deprivation).

76. Since *Rodriguez Diaz*, courts in this Circuit have found that the analysis in that case does not preclude the claim that procedural due process requires a bond hearing for those detained under Section 1226(c). *See Hogarth v. Giles*, No. 5:22-cv-01809, Dkt. 20 at *16-17 (C.D. Cal. Jan. 11, 2023) ("[T]he analysis for [this] *Mathews* factor here differs greatly from that of the Ninth Circuit in *Rodriguez Diaz*, primarily due to the fact that Section 1226(c) provides no opportunity for any further bond determinations for the duration of Petitioner's detention . . . It cannot be that due process authorizes infinite detention without any opportunity for reconsideration."), *report and recommendation adopted in relevant part*, Dkt. 24 (C.D. Cal. Feb. 23, 2023); *see also Pham v. Becerra*, No. 23-cv-01288-CRB, 2023 WL 2744397 (N.D. Cal. Mar. 31, 2023) (granting petition and ordering individualized hearing for petitioner subject to prolonged detention under Section 1226(c) after *Rodriguez Diaz*); *Doe v. Garland*, No. 3:22-cv-03759-JD, 2023 WL 1934509 (N.D. Cal. Jan. 10, 2023) (same).

77. Unlike the petitioner in *Rodriguez Diaz*, Petitioner has no statutory or regulatory access to individualized review of his detention. As the government has conceded elsewhere, prolonged detention without any hearing violates procedural due process. *See Reid*, 17 F.4th at 8; *Sajous*,

2018 WL 2357266, at *8. *Rodriguez Diaz* thus does not disturb the many cases in this district holding that those in Petitioner's circumstances, are entitled to an individualized hearing.

2. The factors discussed in *German Santos* also favor Petitioner.

78. To the extent the Court considers the factors discussed by the Third Circuit in *German Santos*, those factors also weigh in favor of Petitioner—further showing that his detention is unconstitutionally prolonged, and he is entitled to an individualized custody evaluation.

79. Under that framework, the duration of detention is "[t]he most important factor," *German Santos*, 965 F.3d at 211. Here, the almost 18 months Petitioner has been detained is well beyond the six months to one year that most courts find presumptively unconstitutional absent a hearing. *See Gonzalez*, 2019 WL 330906, at *3 ("In general, as detention continues past a year, courts become extremely wary of permitting continued custody absent a bond hearing") (collecting cases). Where a habeas petitioner had been detained for "just over a year," the court found that this factor "weigh[ed] *strongly* in his favor." *Gonzalez*, 2019 WL 330906, at *5 (emphasis added); *see also supra* at ¶ 1112 (citing cases with similar durations of detention where a procedural due process violation was found). In short, this factor weighs decidedly in Petitioner's favor.

80. The three other *German Santos* factors also weigh in Petitioner's favor: First, detention is likely to continue for several more months, and possibly over another year. Petitioner's case is currently before the BIA and his opening brief was filed on November 20, 2025. *See supra* ¶¶ 54; *German Santos*, 965 F.3d at 211 ("When the [non-citizen's] removal proceedings are unlikely to end soon, this suggests that continued detention without a bond hearing is unreasonable."). Second, looking to the reasons for the delay, Petitioner cannot be blamed for his prolonged detention. He has diligently sought relief to avoid the persecution and torture that he will suffer if removed to Cuba, even while he has suffered delays due to the immigration court's limited availability. His appeal to the BIA was made in good faith to challenge the application of the CLP rule in denying him asylum. *See supra* at ¶¶ 37-53. Thus, to the extent there has been unnecessary delay in proceeding with his case, that delay is due to the government. *See German Santos*, 965 F.3d at 211.

81. Third, and finally, Petitioner's conditions of confinement are equal to or worse than conditions of criminal punishment. *See supra* at ¶¶ 34-36, 83. This factor weighs decisively in his favor. "The more that the conditions under which the [noncitizen] is being held resemble penal confinement, the stronger his argument that he is entitled to a bond

hearing." *De Paz Sales*, 2019 WL 4751894, at *6 (N.D. Cal. Sept. 30, 2019) (internal quotation marks omitted). "And as the length of detention grows, so does the weight that [courts] give this factor." *German Santos*, 965 F.3d at 211. Because Petitioner has been detained for almost 18 months in prison-like conditions, procedural due process requires an individualized hearing.

C. This Court Should Hold the Evidentiary Hearing to Which Petitioner Is Entitled.

82. If it finds a procedural due process violation, this Court should hold the evidentiary hearing to determine whether the government can justify further detention.

83. This Court's habeas power gives it the authority to conduct evidentiary hearings and release a petitioner to bail. "[T]he federal habeas statute provides for a swift, flexible, and summary determination of [a petitioner's] claim." *Preiser v. Rodriguez*, 411 U.S. 475, 495 (1973). The statute directs district courts to "hear and determine the facts" of a habeas petition and to "dispose of the matter as law and justice require." 28 U.S.C. § 2243. Indeed, the federal habeas statute codifies the common law writ of habeas corpus as it existed in 1789. *See I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001) ("At its historical core, the writ of habeas corpus has served as a means of reviewing

the legality of Executive detention, and it is in that context that its protections have been strongest."). The common law gave habeas courts power to hold a hearing and release a habeas petitioner to bail even absent a statute contemplating such release. *See Wright v. Henkel*, 190 U.S. 40, 63 (1903) ("[T]he Queen's Bench had, 'independently of statute, by the common law, jurisdiction to admit to bail.'" (quoting *Queen v. Spilsbury*, 2 Q. B. 615 (1898)); *see also Mapp v. Reno*, 241 F.3d 221, 223 (2d Cir. 2001) ("We hold that the federal courts have the same inherent authority to admit habeas petitioners to bail in the immigration context as they do in criminal habeas cases.").

84. District courts regularly exercise this authority in cases involving immigration detention. *See Leslie v. Holder*, 865 F. Supp. 2d 627, 633 (M.D. Penn. 2012) ("[W]e are empowered to conduct bail proceedings in habeas corpus proceedings brought by immigration detainees. Indeed, the authority to conduct such hearing has long been recognized as an essential ancillary aspect of our federal habeas corpus jurisdiction. . . . [T]here is nothing extraordinary or novel about this practice of conducting bail hearings in connection with federal immigration habeas corpus proceedings.") (collecting cases); *Madrane v. Hogan*, 520 F. Supp. 2d 654, 669-671 (M.D. Pa. 2007) (holding evidentiary hearing and ordering conditional release from

unconstitutional detention).

85. Requiring Petitioner to prevail in this court and then litigate *another* administrative proceeding in his effort to remedy his unconstitutional detention would undermine the "demand for speed, flexibility, and simplicity" that the federal habeas statute requires. *Hensley*, 411 U.S. at 350. The Supreme Court has instructed district courts addressing habeas claims "'to cut through barriers of form and procedural mazes'" and has "consistently rejected interpretations of the habeas corpus statute that would suffocate the writ in stifling formalisms or hobble its effectiveness with the manacles of arcane and scholastic procedural requirements." *Id.* (quoting *Harris v. Nelson*, 394 U.S. 286, 291 (1969)). Referring the procedural safeguard that Petitioner seeks to an administrative immigration adjudicator as a separate litigation matter with its own separate appellate process would erect "barriers of form and procedural mazes," instead of following the Supreme Court's instruction to eliminate them. *See id.*

86. By holding the custody hearing itself, this Court can provide a truly "swift" and certain remedy for a final resolution of Petitioner's detention. *See Preiser*, 411 U.S. at 495. The Court can avoid the duplicative and time-consuming efforts by the government and pro bono counsel to resubmit evidence and arguments to an immigration court in that forum. *See generally*

U.S. Dep't of Justice, Imm. Ct. Practice Manual, available at https://www.justice.gov/eoir/reference-materials/ic. It also avoids the possibility that Petitioner will be forced to return to this Court to *enforce* its order after the IJ hearing is conducted, any denial is appealed to the BIA, additional motions for injunctive relief are litigated in this Court, and disagreements over whether the Court has jurisdiction over post-bond hearing claim are also adjudicated. *See, e.g.*, *Jimenez v. Wolf*, No. 19-cv-07996-NC, 2020 WL 1082648, *4 (N.D. Cal. Mar. 6, 2020) (granting petitioner's motion for a temporary restraining order and ordering release where the court had previously ordered an immigration court bond hearing but that hearing did not comply with due process); *Ramos v. Sessions*, 293 F. Supp. 3d 1021, 1036-38 (N.D. Cal. 2018) (granting petitioner's motion to enforce and ordering release). In short, it is the swiftest way to ensure that, if the government cannot justify further detention, Petitioner is relieved of further unnecessary and unconstitutional restrictions on his liberty.

87. District courts are at no disadvantage in considering evidence relevant to a custody proceeding. In fact, courts in this Circuit have regularly considered whether the government can justify further detention. *See id.*; *Ramos v. Sessions*, 293 F. Supp. 3d at 1032-33, 1036-38 (granting petitioner's motion

to enforce and ordering release after conducting an "independent review" of the IJ's bond determination and finding legal error); *Sales*, 2017 WL 6855827, *7 (N.D. Cal. Sept. 20, 2017) (same); *Judulang v. Chertoff*, 562 F. Supp. 2d 1119, 1126-27 (S.D. Cal. 2008) (same); *Mau v. Chertoff*, 562 F.Supp.2d 1107, 1118-19 (S.D. Cal. 2008) (same). And district courts make custody determinations all the time in the criminal pre-trial detention context. *See* 18 U.S.C. § 3142.

88. In short, if the Court determines that procedural due process requires an individualized hearing, it should conduct the hearing itself and evaluate whether the government can justify continued prolonged detention in this case.

D. At Any Custody Hearing, the Government Must Justify Petitioner's Continued Detention by Clear and Convincing Evidence.

89. Where a custody hearing is warranted as a procedural safeguard against unreasonably prolonged detention, the government must bear the burden of justifying continued confinement by clear and convincing evidence. *Singh v. Holder*, 638 F.3d 1196, 1205 (9th Cir. 2011). "Because it is improper to ask the individual to share equally with society the risk of error when the possible injury to the individual—deprivation of liberty—is so significant, a clear and convincing evidence standard of proof provides the appropriate

level of procedural protection." *Id.* at 1203-04 (internal citations and quotation marks omitted); *see also Cooper v. Oklahoma*, 517 U.S. 348, 363 (1996) ("[D]ue process places a heightened burden of proof on the State in civil proceedings in which the 'individual interests at stake … are both particularly important and more substantial than mere loss of money'") (citation omitted)); *Foucha v. Louisiana*, 504 U.S. 71, 80-81 (1992) (requiring clear and convincing evidence to justify civil commitment because "[f]reedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause.").

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Violation of the Fifth Amendment to the United States Constitution (Substantive Due Process—Prolonged Detention)

90. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as is fully set forth herein.

91. The Due Process Clause of the Fifth Amendment protects all "person[s]" from deprivation of liberty "without due process of law." U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690. 69. Immigration detention is constitutionally permissible only when it furthers

the government's legitimate goals of ensuring the noncitizen's appearance during removal proceedings and preventing danger to the community. *See id.*

92. Because Mr. Valido Mesa's detention has become prolonged and is punitive in nature rather than related to a legitimate government purpose, it violates his substantive due process rights.

SECOND CLAIM FOR RELIEF

Violation of the Fifth Amendment to the United States Constitution (Procedural Due Process—Detention)

93. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein.

94. "In the context of immigration detention, it is well-settled that due process requires adequate procedural protections to ensure that the government's asserted justification for physical confinement outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Hernandez*, 872 F.3d at 990 (cleaned up); *Zinermon*, 494 U.S. at 127 (Generally, "the Constitution requires some kind of a hearing before the State deprives a person of liberty or property.").

95. Petitioner has a profound personal interest in his liberty, and the government has no legitimate interest in continuing his detention. There is

nothing in Petitioner's record suggesting that he would abscond or endanger the community. However, because Mr. Valido Mesa has not been afforded an individualized review before a neutral-decision-maker, he has had no opportunity to contest his continued detention. Thus, his 18-month detention with no bond hearing violates his procedural due process rights.

PRAYER FOR RELIEF

Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this matter;
2. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.
3. Issue a Writ of Habeas Corpus ordering Respondents to immediately release Petitioner from custody, or in the alternative ordering Respondents to provide a hearing before a neutral decision-maker to determine whether his continued detention is warranted given his lack of criminal history and the grant of relief on June 24, 2025.
4. Enjoin Respondents from transferring Petitioner outside this District or deporting Petitioner pending these proceedings;
5. Award Petitioner his costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act and 28 U.S.C. § 2412; and

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

Date: 7/10/2026

Respectfully Submitted,

/s/ Janice Deaton

IMMIGRANT

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Attorney for Petitioner

DECLARATION OF RODNEY VALIDO MESA IN SUPPORT OF APPLICATION FOR HABEAS CORPUS

1. I, Rodney Valido Mesa, am a native and citizen of Cuba. I entered the United States for the first and only time on January 15, 2025, to seek asylum. I immediately turned myself into immigration officials upon crossing the border from Mexico into Calexico, CA. I have been detained since my initial entry on January 15, 2025. As of the date of this declaration, I have been in immigration detention for approximately eighteen months. I am filing this declaration in support of my petition for habeas corpus ordering my release from immigration custody.

Overview

2. On January 15, 2025, I crossed the border into the United States without inspection, and I immediately turned myself into immigration officials to seek asylum. I told the officers that I feared return to Cuba. They detained me, and I had a credible fear interview with an asylum officer about why I am afraid of returning to Cuba. I passed my interview, and I was able to get an attorney on my asylum case.

3. On June 24, 2025, I had my final hearing for my asylum application and testified in court. The judge believed me about what happened to me in Cuba but said that I did not qualify for asylum because of how I crossed the border. She heard my testimony about how I was kidnapped in Mexico and how I feared for my life in Mexico, but said that I still needed to wait for a CBPOne appointment to cross. She granted me withholding of removal to Cuba. I have remained continuously detained since that hearing. Although I appealed the denial of asylum to the Board of Immigration Appeals (BIA), I remained in ICE custody throughout the appeal process and after the BIA dismissed my appeal.

Facts

4. In October of 2024, I participated in an anti-government protest in La Habana, Cuba. I disagree with how the Cuban government punishes people for speaking their mind about the country and the government, [redacted] At this protest, I was arrested, beaten, interrogated, and jailed. I was in jail for about a month, in horrible conditions. I was not given enough food, I was not allowed to bathe, and I was not allowed to speak to my family or a lawyer. I was never charged with a crime or brought to court. The police officers who arrested me beat me severely both at the beginning of my detention and at the end, trying to get me to tell them who organized the protest and telling me that they would kill me if they found me at another protest. [redacted]

5. After I was finally released, I went back home to my mother. The same police officers that beat me [redacted] were watching me in my neighborhood. I saw them multiple times on my block. I was in constant fear that I would be arrested again and never let out. Many people in Cuba are in prison for their political views.

6. I decided I had to leave, so I traveled to Mexico with the intent to seek asylum in the United States, where my brother and sister are living. While I was traveling through Chiapas, the bus I was on was stopped by cartel members. They took all of us off the bus and held us captive for three days. We had to pay a ransom to be released. I saw them kill the bus driver, and severely beat some of the people in the group to coerce payments. Once my payment was made, they told me I would not be as lucky if they saw me in Mexico again.

7. I went to Tijuana as quick as I could, and I crossed into the United States as soon as I was able to. I was afraid I would be kidnapped again or killed by the cartels since they knew who I was. I tried to get an appointment with CBPOne, but I was not able to schedule one.

8. In Tijuana, I was in a house where my smuggler sent me in a taxi. I was not allowed to leave the house, even to buy food because the smuggler said it was too dangerous in the streets as a migrant. After about 4 days in the house, the smuggler took me to the border and told me to cross.

9. I entered the United States on January 15, 2025. I turned myself into the officers there, and I told them I was seeking asylum. I was detained on the spot and transferred to Otay Mesa Detention Center. I had an interview with an asylum officer about my fear of return to Cuba on January 17, 2025. I got a positive decision and started appearing in the Otay Mesa Immigration Court in February.

10. In late February, my attorney sent the information about my brother and my sister in Tampa, Florida to my deportation officer and requested that I be released on parole. My brother has legal permanent residency and housing for me. I have no criminal history, and my only immigration violation is crossing the border without inspection to seek asylum. My deportation officer did not respond to this parole request until May, just a few weeks before my final hearing. He denied this parole request, saying there were no humanitarian reasons to justify my release.

11. I submitted my I-589 and all of the evidence to show my arrest, my medical treatment, and the police surveillance of my house in Cuba. I appeared on June 24, 2025 to testify, and the judge said she believed me and found that I had suffered past persecution for my

political opinion. However, she said I did not qualify for asylum because of the asylum ban in effect when I crossed the border without an appointment with CBPOne. Even though I was kidnapped in Mexico, she said that I was not in imminent danger when I crossed the border and so I could not receive asylum. She granted withholding of removal.

12. I thought I would get out of detention after that, because I won my case and I cannot be removed to Cuba. However, my deportation officer kept telling me I'd have to stay in detention while they looked for another country to remove me to. My lawyer kept telling me that there was no final removal order in my case and they could not remove me, because we are appealing the denial of asylum.

13. On June 24, 2025, my attorney again asked that I be released to my brother. We never received any response to that parole request.

14. In December of 2025, when I had been detained for 11 months, my attorney sent an updated parole request to ICE, showing my brother's income, housing, and continuing availability to sponsor me. However, ICE denied my parole with no reason other than that my case is on appeal with the BIA. My attorney explained to ICE officers that no matter what, I would win withholding of removal because the DHS attorney was not appealing that decision, but ICE still will not release me.

15. On May 31, 2026, ICE transferred me from the Otay Mesa Detention Center to the California City Detention Facility. The transfer moved me farther away from the attorneys representing me and continued to separate me from my family. Despite the transfer to a different detention center, my detention has never been interrupted and I remain in ICE custody today. ICE officers have never visited me to discuss my release, and I was scheduled for a custody review on June 30, 2026 because no country is willing to accept me. I have not received a decision for this custody review.

16. After the Board of Immigration Appeals dismissed my appeal, my attorney asked the Immigration Court to provide me with a bond hearing so that I could seek release while remaining in the United States with my family. The Immigration Judge refused to consider my request, stating that the court lacked jurisdiction because ICE considers me to be detained under 8 U.S.C. § 1225. As a result, even after my appeal was concluded, I was unable to obtain any hearing before an Immigration Judge regarding whether my continued detention was necessary or whether I could be released on bond.

CONDITIONS IN DETENTION

17. I was detained at Otay Mesa Detention Center from January 2025 until May 31, 2026. On May 31, 2026, ICE transferred me to the California City Detention Facility, where I remain detained. Throughout my detention, I have been unable to see my family in person because they live in Florida and cannot easily travel such long distances.

18. I'm starting to feel hopeless and depressed. I am still detained more than a year after my final hearing, even though the Immigration Judge found my testimony credible and granted me withholding of removal.

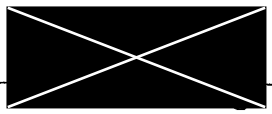
19. Detention is just like jail. They have people here serving criminal sentences, and we have the same conditions as them. The food is horrible, and at times it gets really crowded in my pod. At one point we had 11 or 12 people in a pod meant for 8 people, and there were people on the floor sleeping on mats. I rely on my family to put money on my books so I can buy food, because they don't give us enough time to eat.

20. Before I had to leave Cuba, I was a physical education teacher. I loved teaching, and I was looking forward to starting my career. Now, I wonder if I will ever see my family again. When deportation officers come to my pod, they threaten to send me to another country like Mexico. I am afraid to be sent alone to a country that I don't know, or to Mexico where I was kidnapped. These visits also make me depressed and hopeless.

The above is true and correct to the best of my knowledge.

Date: Signature:

I, Tracy Crowley, attest to my ability to translate from Spanish to English, and I certify that, to the best of my Spanish and English language competency, this is a correct translation of the Spanish declaration signed by Mr. Valido Mesa.

Date: 07/10/2026 Signed: 

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Attorney for Petitioner

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

RODNEY VALIDO MESA

Petitioner,

v.

CHRISTOPHER CHESTNUT, Senior Warden of California City Detention Facility, MOISES BECERRA, Field Officer Director for the San Francisco Immigration and Customs Enforcement Office ; DAVID J. VENTURELLA, Acting Director of United States Immigration and Customs Enforcement; MARKWAYNE MULLIN, Secretary of the United States Department of Homeland Security, TODD BLANCHE, Attorney General of the United States, acting in their official capacities,

Respondents.

Case No.

APPLICATION FOR ORDER TO SHOW CAUSE

Pursuant to 28 U.S.C. § 2243, Petitioner respectfully requests that this Court issue an order to show cause, directing Respondents to show cause within three days why his

Petition for Writ of Habeas Corpus, filed herewith, should not be granted. The federal habeas corpus statute, 28 U.S.C. § 2243, provides that a court hearing a petition for writ of habeas corpus "shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto." The order to show cause "shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* A hearing date shall be set "not more than five days after the return unless for good cause additional time is allowed." *Id.*

As described in the accompanying Petition, Petitioner's continued detention in the custody of Immigration and Customs Enforcement (ICE), violates both the substantive and procedural components of the Due Process Clause of the Fifth Amendment to the United States Constitution. Specifically, Mr. Valido Mesa was granted withholding of removal to Cuba on June 24, 2025. Despite that, ICE-ERO have denied his requests for release and Mr. Valido Mesa has been detained for approximately 18 months without a hearing before a neutral decision-maker to determine whether his detention serves a legitimate government purpose.

Immediate relief from this Court, in the form of an order for the government to show cause within three days why the Petition should not be granted, is essential. Petitioner further requests an opportunity to file a traverse or reply, and a prompt hearing on this Petition.

Dated: 7/10/2026

Respectfully submitted,
By: */s/ Janice Deaton*
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Attorney for Petitioner

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

RODNEY VALIDO MESA
Petitioner,

v.

CHRISTOPHER CHESTNUT, Senior Warden of California City Detention Facility, MOISES BECERRA, Field Officer Director for the San Francisco Immigration and Customs Enforcement Office-; DAVID J. VENTURELLA, Acting Director of United States Immigration and Customs Enforcement; MARKWAYNE MULLIN, Secretary of the United States Department of Homeland Security, TODD BLANCHE, Attorney General of the United States, acting in their official capacities,

Respondents.

Case No.

[PROPOSED] ORDER TO SHOW CAUSE

Presently before the Court are Petitioner's pending Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241 and Application for Order to Show Cause Pursuant to 28 U.S.C. § 2243. Petitioner submitted his Petition for a Writ of Habeas Corpus on January 26, 2025, and paid the required $5 filing fee.

Petitioner claims that his continued detention (1) violates his Fifth Amendment substantive and procedural due process rights. Pet. For Writ of Habeas Corpus. Petitioner asks the Court to issue an order to show cause as requested by the Application and issue a writ of habeas corpus ordering Petitioner's immediate release from custody or, in the alternative, to order a bond hearing.

"A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto." 28 U.S.C. § 2243. Although § 2243 provides, as Petitioner notes, that the writ or order to show cause "shall be returned within three days" and a hearing shall be set "not more than five days after the return" absent good cause for additional time, *id.*, "[t]he district court may apply any or all of the [R]ules [Governing Section 2254 Cases in the United States District Courts (the "Rules")] to a habeas petition not covered by Rule 1(a)," Rule 1(b), 28 U.S.C. § 2254; *see Castillo v. Pratt*, 162 F. Supp. 2d 575, 577 (N.D. Tex. 2001) (noting that district courts can apply the Rules to petitions "arising under § 2241"). Rule 4 provides that a judge "must promptly examine [the petition]" and, "[i]f the petition is not dismissed, the judge must order the respondent to file an answer, motion, or other response within a fixed time," and "the clerk must serve a copy of the petition and any order on the respondent[s]." Rule 4, 28 U.S.C. § 2254; *see Wallace v. Heinze*, 351 F.2d 39, 40 (9th Cir. 1965) (per curiam) (noting that

district court possesses inherent power to provide respondent with additional time to file return to order to show cause).

Upon consideration of Petitioner's Application for Issuance of Order to Show Cause pursuant to 28 U.S.C. § 2243 and Petitioner's Petition for Writ of Habeas Corpus (Dkt. No. 1), IT IS HEREBY ORDERED that:

1. Respondents shall file a return on the Order to Show Cause why the Petition for Writ of Habeas Corpus should not be granted by .

Accordingly, the Court **GRANTS** the Application and **ORDERS** Respondents **TO SHOW CAUSE** why the Petition should not be granted. The Parties **SHALL COMPLY** with the following briefing schedule:

(1) Respondents **SHALL FILE AND SERVE** a Return on or before July 15, 2026. The Return **SHALL INCLUDE** all documents, orders, and transcripts relevant to the Petition. Further, the Return **SHALL ADDRESS** the necessity of an evidentiary hearing on the Petition.

(2) Petitioner **MAY FILE AND SERVE** a Traverse, if any, on or before July 17, 2026.

IT IS SO ORDERED.

DATE this _____ day of _____, 20____.

_____

United States District Judge