

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

I. What is the purpose of this guide?

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

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

1. Have you been detained without a bond hearing for more than six months?
2. Are your removal proceedings are still pending before the Immigration Court, Board of Immigration Appeals or a United States Circuit Court of Appeals?;
3. Has the Immigration Judge told you or ruled that you are ineligible for a bond hearing, or that the Immigration Judge does not have jurisdiction to grant you bond, (a) because of your criminal history, OR (b) because you came to the United States seeking asylum and have been classified as an “arriving alien” on your Notice to Appear?

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

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

II. What does “Pro Se” mean?

By using this guide, you will be proceeding as a *pro se* petitioner. “Pro se” is Latin for “in one’s own behalf.” This means that you will be filing this petition in court on your own without the assistance of a lawyer. Most habeas petitions are filed *pro se* because there is no constitutional right to a lawyer in a habeas case. This guide is designed to help you file a petition for habeas corpus without the assistance of an attorney.

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

III. In which court do I file?

This *pro se* guide is intended for individuals detained in the Mesa Verde and Golden State Annex detention facilities. The ICE Field Office responsible for supervising these two detention centers is located in San Francisco, CA and falls under the jurisdiction of the United States District Court for the Northern District of California. Therefore, you will file your petition for habeas corpus in federal court in the United States District Court for the Northern District of California.

IV. How do I file a habeas petition?

- Fill out the attached **Petition for Writ of Habeas Corpus**. You must complete it in English. You must sign and date the petition.
- If you would like to ask the Court to appoint a free lawyer for you, fill out the attached **Motion for Appointment of Counsel**. But, you should be aware that in most cases, the Court will decide not to appoint you a free lawyer.
- Prepare the filing fee of \$5.00 (cash, money order, or check made out to “Clerk, U.S. District Court”). If you cannot pay, see the **Instructions for Filing and Application to Proceed in Forma Pauperis**, attached.
- If you want to be considered for a free lawyer, you must apply to be “in forma pauperis” instead of paying the \$5.00. “In forma pauperis” is Latin and means you are financially unable to pay the costs and fees associated with a lawsuit.
- Mail the originals plus two copies of everything, and the filing fee (unless you have filed an application to proceed *in forma pauperis*), to the address below.

Office of the Clerk
United States District Court
450 Golden Gate Ave., 16th Floor
San Francisco, CA 94102-3489

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

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

- a. Provide detailed information to the best of your ability and confirm that all your information is correct.
- b. In **paragraphs 1, 6, and 10** please insert whether you are currently detained at “Golden State Annex” or “Mesa Verde.”

- c. In **paragraph 2**, insert how many months you have been detained by ICE without a bond hearing (include time you have been detained at ICE detention facilities other than Mesa Verde or Golden State Annex).
- For example, if you were detained in Texas for 3 months, Golden State Annex for 1 month, and Mesa Verde for 9 months, you have been detained by ICE for 13 months. You would write “13” in the blank.
- d. In **paragraph 19**, briefly describe the claims you are pursuing in your immigration (removal) proceedings or before USCIS. Include all claims presented, such as: applications for asylum, withholding of removal, Convention Against Torture, cancellation of removal, adjustment of status, termination of proceedings, U visa, and T visa.
- e. In **paragraphs 20 and 35**, write the month and year ICE began detaining you.
- f. In **paragraph 24**, additional facts to describe could include:
- Whether you have attempted to request a bond hearing from the Immigration Court, how many times you requested a bond hearing, and the response(s) you received.
 - Negative or abusive conditions of your detention (for example, inadequate medical care, expired food, insects, unsanitary bathrooms, abuse, solitary confinement, etc.).
 - Any mental health or physical health conditions you have that are caused or made worse by detention.
 - Total time you have been incarcerated (jail/prison) and detained (ICE).
 - If you have criminal convictions ICE is already aware of, you can choose to *briefly* describe them, and also describe your rehabilitation and remorse.
 - The status of your immigration case and how long you believe the case will take to be resolved, including appeals.
 - Why you hope to be released (What will you do when you are released? Why is it important to you to be free? Who will you spend time with (family, friends, etc.)?).
 - Your positive equities (for example, how long you have been in the U.S., family ties to the U.S., work history, good behavior, any training/classes you participated in while incarcerated or detained, evidence of rehabilitation, etc.).
 - If true, your willingness to accept electronic monitoring or other alternatives to detention if you are released.
 - Connections you have to family or the community that would help you if you are released.
 - Plans you have if you are released (such as work, housing, etc.) to demonstrate you have a plan to re-enter society in a positive way.
 - If you will have to check in with a parole officer after release, state your intention to do so and include the address where you will go for the check-in, if known.

Use additional pages to write more facts, if needed.

- g. On **page 19**, write in the date, your name, and your signature.
- h. Also on **page 19**, check the box for the facility where you are detained.

VI. What happens next?

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

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

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

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

This Pro Se Habeas Packet has been created by immigration and immigrants' rights advocates in northern California, including the ACLU of Northern California (ACLU NorCal), Asian Americans Advancing Justice - Asian Law Caucus (ALC), and the California Collaborative for Immigrant Justice (CCIJ). The guide is for informational purposes only and does not contain legal advice. It was last updated in December 2023.

Guía para la presentación de una petición de habeas pro se para personas detenidas por ICE en los centros de detención de Golden State Annex y Mesa Verde

I. ¿Cuál es el propósito de esta guía?

Esta guía está diseñada para ayudar a las personas detenidas por el Servicio de Inmigración y Control de Aduanas (ICE, por sus siglas en inglés) que no tienen a un abogado para completar y presentar una “petición de auto de habeas corpus”. El “habeas corpus” es un derecho protegido por la Constitución y las leyes federales que permite que los individuos impugnen su detención o encarcelamiento por considerarlo ilícito.¹

Si usted responde “Sí” a las siguientes tres preguntas, esta guía ha sido diseñada para ayudarle a impugnar su detención por ICE y solicitar una audiencia de fianza ante un juez de inmigración:

1. ¿Ha estado usted detenido sin una audiencia de fianza durante más de seis meses?
2. ¿Su proceso de repatriación (removal) está aún pendiente ante el Tribunal de Inmigración, la Junta de Apelaciones de Inmigración o el Tribunal de Apelaciones del Circuito de EE. UU.?
3. ¿El juez de inmigración le ha dicho o ha dictaminado que usted no es elegible para una audiencia de fianza o que el juez de inmigración no tiene jurisdicción para otorgarle una fianza, (a) por sus antecedentes penales, O (b) porque usted vino a Estados Unidos solicitando asilo y ha sido clasificado como un “extranjero que llega al país” (arriving alien) en su notificación de comparecer?

Si usted respondió “Sí” a cada una de estas tres preguntas Y no ha tenido una audiencia de fianza en el Tribunal de Inmigración en los últimos seis meses, es posible que pueda presentar una petición de habeas usando la guía para solicitar una audiencia de fianza frente a un juez de inmigración.

Por favor tenga en cuenta que, a diferencia de los procesos de inmigración, los procesos y decisiones de habeas corpus NO son confidenciales. La información que usted incluya en su petición de habeas puede ser accesible para el público.

II. ¿Qué significa “pro se”?

Al usar esta guía, usted actuará en calidad de solicitante *pro se*. Las palabras “pro se” están en latín y significan “en nombre propio”. Esto significa que usted presentará esta petición en el tribunal por cuenta propia, sin la asistencia de un abogado. La mayoría de las peticiones de habeas se presentan *pro se* porque no existe el derecho constitucional de contar con un abogado en un caso de habeas. Esta guía está diseñada para ayudarle a presentar una petición de habeas corpus sin la asistencia de un abogado.

¹ Artículo I, párrafo 9 cláusula 2 de la Constitución de EE. UU. (“El privilegio del auto de habeas corpus no se suspenderá, excepto en los casos en los que la seguridad pública lo requiera por una rebelión o invasión”.); artículo 2241, Título 28 del Código de EE. UU.

III. ¿En qué tribunal debo presentar la petición?

Esta guía *pro se* ha sido creada para las personas detenidas en los centros de detención de Mesa Verde y Golden State Annex. La sucursal de ICE responsable de supervisar estos dos centros de detención está ubicada en San Francisco, CA y está bajo la jurisdicción del Tribunal de Distrito de EE. UU. para el Distrito Norte de California. Por lo tanto, usted presentará su petición de habeas corpus en el tribunal federal en el Tribunal de Distrito de EE. UU. del Distrito Norte de California.

IV. ¿Cómo presento una petición de habeas?

- Complete la **petición de auto de habeas corpus**. Debe completarla en inglés. Debe firmar y fechar la petición.
- Si desea pedirle al tribunal que nombre a un abogado gratuito para usted, complete la **moción para el nombramiento de un abogado (Motion for Appointment of Counsel)** adjunta. Pero, debe tener en cuenta que, en la mayoría de los casos, el tribunal decidirá no nombrar a un abogado gratuito para usted.
- Prepare una tasa judicial de \$5.00 (dinero en efectivo, giro bancario o cheque emitido a “Clerk, U.S. District Court” [Secretario del Tribunal de Distrito de EE. UU.]). Si no puede pagar, vea las **Instrucciones para presentar una solicitud de procesar in forma pauperis**, adjuntas al presente.
- Si desea que lo consideren para un abogado gratuito, usted debe presentar una solicitud de proceder “in forma pauperis” en lugar de pagar los \$5.00. Las palabras “In forma pauperis” están en latín y significan que usted no tiene los medios financieros para pagar los costos y honorarios asociados con un pleito judicial.
- Envíe los originales por correo más dos copias de todo, y la tasa judicial (a menos que haya presentado una solicitud de continuar *in forma pauperis*), a la dirección indicada a continuación.

Office of the Clerk (Oficina del secretario del juzgado)
United States District Court (Tribunal de Distrito de EE. UU.)
450 Golden Gate Ave., 16th Floor
San Francisco, CA 94102-3489

- Guarde una copia adicional de todo el paquete para sus propios registros.

V. ¿Hay alguna información que debería conocer para completar la petición de habeas?

- a. Proporcione información lo más detallada que le sea posible y confirme que toda su información sea correcta.

- b. En los **párrafos 1, 6 y 10** por favor indique si está detenido en la actualidad en el “Golden State Annex” o en “Mesa Verde.”
- c. En el **párrafo 2**, indique cuántos meses ha estado detenido por ICE sin una audiencia de fianza (incluya también el tiempo que ha estado detenido en centros de detención de ICE distintos a Mesa Verde o Golden State Annex).
- Por ejemplo, si usted estuvo detenido en Texas durante 3 meses, Golden State Annex durante 1 mes, y Mesa Verde durante 9 meses, usted ha estado detenido por ICE durante 13 meses. Usted escribiría “13” en el espacio en blanco.
- d. En el **párrafo 19**, describa brevemente los reclamos que está presentando en su procedimiento de inmigración (repatriación) o ante Servicio de Ciudadanía e Inmigración de Estados Unidos (USCIS, por sus siglas en inglés). Incluya todos los reclamos presentados, tales como: solicitudes de asilo, suspensión de repatriación, Convención Contra la Tortura, cancelación de repatriación, ajuste de estado, terminación de procedimientos, visa U y visa T.
- e. En los **párrafos 20 y 35**, escriba el mes y el año en el que ICE comenzó su detención.
- f. En el **párrafo 24**, puede incluir la descripción de los siguientes hechos:
- Si usted ha intentado solicitar una audiencia de fianza del Tribunal de Inmigración, cuántas veces ha solicitado una audiencia de fianza, y la o las respuestas que ha recibido.
 - Condiciones negativas o abusivas de su detención (por ejemplo, atención médica inadecuada, alimentos vencidos, insectos, baños poco sanitarios, maltrato, confinamiento solitario, etc.).
 - Todo problema de salud mental o físico que haya sido causado o empeorado por la detención.
 - Tiempo total que ha estado encarcelado (en la cárcel/la prisión) y detenido (ICE).
 - Si usted tiene condenas penales que ICE ya conoce, puede elegir describirlas *brevemente*, y también describir su rehabilitación o arrepentimiento.
 - El estado de su caso de inmigración y cuánto tiempo cree que tomará resolver el caso, incluyendo las apelaciones.
 - Por qué espera ser liberado (¿Qué hará cuando lo liberen?) ¿Por qué es importante para usted estar libre? ¿Con quién pasará su tiempo (familiares, amigos, etc.)?).
 - Sus puntos positivos (por ejemplo, cuánto tiempo ha estado en EE. UU., lazos de familia en EE. UU., historia de trabajo, buen comportamiento, cualquier entrenamiento/clases en los que haya participado durante su encarcelamiento o detención, evidencia de rehabilitación, etc.).
 - De ser cierto, su voluntad de aceptar monitoreo electrónico u otras alternativas en lugar de la detención si es liberado.

- Conexiones que tiene con familiares o la comunidad que lo ayudarían si es puesto en libertad.
- Planes que tiene de ser puesto en libertad (tales como trabajo, vivienda, etc.) para demostrar que usted tiene un plan para reingresar a la sociedad de forma positiva.
- Si le exigen controles con un supervisor de libertad condicional después de la liberación, indique su intención de cumplir con ellos e incluya la dirección donde irá para hacer los controles, si la conoce.

Use páginas adicionales para escribir más hechos, de ser necesario.

- g. En la **página 19**, escriba la fecha, su nombre y ponga su firma.
- h. También en la **página 19**, marque el recuadro del centro en el que está detenido.

VI. ¿Qué pasará después?

Su caso será asignado a un magistrado (juez auxiliar). Un magistrado es un juez especialmente nombrado que tiene la autoridad necesaria para manejar ciertos casos federales, si las partes están de acuerdo. Usted y el gobierno tendrán la oportunidad de “aceptar” o “rechazar” al magistrado. Si ambas partes “aceptan”, el magistrado estará a cargo de su caso. Si usted o el gobierno “rechazan” al magistrado, se le asignará a un juez de distrito.

El gobierno (ICE) tendrá una oportunidad de responder a su petición. Después de que usted reciba la respuesta del gobierno (también llamada una “devolución” [Return]), puede presentar una “respuesta” opcional (también llamada una “objeción” [Traverse]).

Si lo transfieren a un centro de detención diferente mientras su petición de habeas está pendiente, asegúrese de informárselo al tribunal de habeas. El juez debería seguir a cargo de su caso, incluso aunque ICE lo transfiera a usted a otro lugar.

El juez puede tardar varios meses en tomar una decisión. Si su petición se otorga, probablemente el juez ordene al gobierno que le provea una audiencia de fianza ante un juez de inmigración dentro de un plazo de tiempo determinado. En raras situaciones, el juez de habeas puede ordenar directamente su liberación.

Este paquete de habeas pro se ha sido creado por defensores de los derechos de inmigración y de los inmigrantes en el norte de California, inclusive la ACLU del Norte de California (ACLU NorCal), Asian Americans Advancing Justice - Asian Law Caucus (ALC), y California Collaborative for Immigrant Justice (CCIJ). Esta guía es solo para propósitos informativos y no contiene asesoramiento legal. Fue actualizada por última vez en noviembre de 2023.

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

[Full Name / Nombre Completo]

(A# _____ - _____ - _____)

Petitioner,

v.

Current or Acting Field Office Director, San Francisco Field Office, United States Immigration and Customs Enforcement; Current or Acting Director, United States Immigration and Customs Enforcement; Current or Acting Secretary, United States Department of Homeland Security; and Current or Acting United States Attorney General,

Respondents.

Case No. _____

Petition for Writ of Habeas Corpus

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

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

1 **INTRODUCTION**

2 1. Petitioner¹ is currently detained by Immigration and Customs Enforcement
3 (“ICE”) at the _____ [*escriba el nombre del centro de detención*
4 *donde está detenido*] detention center pending removal proceedings.

5 2. Petitioner has been detained in immigration custody for over _____
6 [*escriba el número de meses que ha estado detenido*] months even though no neutral
7 decisionmaker—whether a federal judge or immigration judge (“IJ”)—has conducted a hearing
8 to determine whether this lengthy incarceration is warranted based on danger or flight risk.

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

11 4. Petitioner therefore respectfully requests that this Court issue a writ of habeas
12 corpus, determine that Petitioner’s detention is not justified because the government has not
13 established by clear and convincing evidence that Petitioner presents a risk of flight or danger in
14 light of available alternatives to detention, and order Petitioner’s release, with appropriate
15 conditions of supervision if necessary, taking into account Petitioner’s ability to pay a bond.

16 5. Alternatively, Petitioner requests that the Court issue a writ of habeas corpus and
17 order Petitioner’s release within 30 days unless Respondents schedule a hearing before an IJ
18 where: (1) to continue detention, the government must establish by clear and convincing
19 evidence that Petitioner presents a risk of flight or danger, even after consideration of alternatives
20 to detention that could mitigate any risk that Petitioner’s release would present; and (2) if the
21 government cannot meet its burden, the IJ shall order Petitioner’s release on appropriate
22 conditions of supervision, taking into account Petitioner’s ability to pay a bond.

23 _____
24 ¹ Petitioner respectfully requests that the Court use his initials, rather than his full last name, in
25 any opinion in his case, as suggested by the Committee on Court Administration and Case
26 Management of the Judicial Conference of the United States. *See* Memorandum Re: Privacy
27 Concern Regarding Social Security & Immigration Opinions (May 1, 2018), *available at*
28 https://www.uscourts.gov/sites/default/files/18-cv-1-suggestion_cacm_0.pdf; *see also* *Jorge M.F.*
v. Jennings, 534 F. Supp. 3d 1050 n.1 (N.D. Cal. Apr. 14, 2021).

1 **JURISDICTION**

2 6. Petitioner is detained in the custody of Respondents at _____
3 [*escriba el nombre del centro de detención donde está detenido*] detention center.

4 7. This action arises under the Due Process Clause of the Fifth Amendment of the
5 U.S. Constitution. Jurisdiction is proper under 28 U.S.C. §§ 1331 (federal question), 2241
6 (habeas corpus); U.S. Const. art. I, § 2; (Suspension Clause); and 5 U.S.C. § 702 (Administrative
7 Procedure Act. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et*
8 *seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C.
9 § 1651.

10 8. Congress has preserved judicial review of challenges to prolonged immigration
11 detention. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 839-841 (2018) (holding that 8 U.S.C.
12 §§ 1226(e), 1252(b)(9) do not bar review of challenges to prolonged immigration detention); *see*
13 *also id.* at 876 (Breyer, J., dissenting). (“8 U.S.C. § 1252(b)(9) . . . by its terms applies only with
14 respect to review of an order of removal”) (internal quotation marks and brackets omitted).

15 **VENUE**

16 9. Venue is proper in this District under 28 U.S.C. § 1391 because at least one
17 Respondent is in this District and because Petitioner is presently detained under the authority of
18 the Director of the San Francisco ICE Field Office, a Respondent in this action.

19 10. _____ [*escriba el nombre del centro de detención donde*
20 *está detenido*] detention center is operated by a private contractor and controlled by the San
21 Francisco Field Office of ICE Enforcement and Removal Operations (“ERO”). The San
22 Francisco Field Office of ICE ERO is responsible for carrying out ICE’s detention operations at
23 this detention center and for adjudicating requests for release from those detained there.

24 11. Respondent Acting or Current Director of the San Francisco ICE Field Office
25 resides in this district for venue purposes because their official duties are performed in this
26 district. *See Doe v. Becerra*, No. 5:23-cv-04767-PCP, 2023 WL 8307557, at *3–6 (N.D. Cal.
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1 Dec. 1, 2023) (San Francisco ICE Field Office Director is properly-named respondent in habeas
2 because they are “a *local* official who is both ‘readily identifiable’ and exercises ‘immediate
3 control’ over [petitioner’s] detention”); *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1185 (N.D.
4 Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (“Instead
5 of naming the individual in charge of the contract facility—who may be a county official or an
6 employee of a private nonprofit organization—a petitioner held in federal detention in a non-
7 federal facility pursuant to a contract should sue the federal official most directly responsible for
8 overseeing that contract facility when seeking a habeas writ.”); *Thongvilay v. ICE*, No. 1:23-cv-
9 01605-CDB (HC) (Nov. 16, 2023) (returning transferred pro se habeas petition from E.D. Cal. to
10 N.D. Cal. because in the immigration detention context, habeas jurisdiction is proper in the
11 Northern District); *Singh Grewal v. Becerra*, No. 23-CV-03621-JCS, 2023 WL 6519272, at *3
12 (N.D. Cal. Oct. 4, 2023) (“The undersigned agrees with *all of the other judges in this District*
13 *who have addressed the question* and finds that the director of the San Francisco Field Office is a
14 proper respondent and therefore that there is jurisdiction in this District even though Petitioner is
15 detained in the Eastern District” (emphasis added)); *id.* at *4 (collecting cases).²

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19 **REQUIREMENTS OF 28 U.S.C. § 2243**

20 12. The Court must grant the petition for writ of habeas corpus or issue an order to

21
22 ² See also *I.E.S. v. Becerra*, No. 23-CV-03783-BLF, 2023 WL 6317617, at *5 (N.D. Cal. Sept.
23 27, 2023) (holding that San Francisco ICE Field Office Director is proper habeas respondent);
24 *Gomez v. Becerra*, No. 23-CV-03724-JCS, 2023 WL 6232236, at *4 (N.D. Cal. Sept. 25, 2023)
25 (same); *id.* at *4 n.2 (noting that “[a]t least fourteen judges in this district” have concluded the
26 same, and not one has held otherwise); *Martinez Leiva v. Becerra*, No. 23-CV-02027-CRB, 2023
27 WL 3688097, at *4 (N.D. Cal. May 26, 2023) (same); *Hernandez Gomez v. Becerra*, No. 23-CV-
28 01330-WHO, 2023 WL 2802230, at *3 (N.D. Cal. Apr. 4, 2023) (same); *Pham v. Becerra*, No.
23-CV-01288-CRB, 2023 WL 2744397, at *4 (N.D. Cal. Mar. 31, 2023) (same); *Salesh P. v.*
Kaiser, No. 22-CV-03018-DMR, 2022 WL 17082375, at *5 (N.D. Cal. Nov. 18, 2022) (same);
Hilario Pankim v. Barr, No. 20-CV-02941-JSC, 2020 WL 2542022, at *4 (N.D. Cal. May 19,
2020) (same).

1 show cause (“OSC”) to Respondents “forthwith,” unless Petitioner is not entitled to relief. 28
2 U.S.C. § 2243. If the Court issues an OSC, it must require Respondents to file a return “within
3 *three days* unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*
4 (emphasis added).

5
6 13. Courts have long recognized the significance of the habeas statute in protecting
7 individuals from unlawful detention. The Great Writ affords “*a swift and imperative remedy* in
8 all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis
9 added); *see also Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (explaining that habeas statute
10 requires expeditious determination of petitions).

11 **PARTIES**

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

14 15. Respondent Secretary of the U.S. Department of Homeland Security (“DHS”), an
15 agency of the United States, is responsible for the administration of the immigration laws. 8
16 U.S.C. § 1103(a). They are a legal custodian of Petitioner. They are named in their official
17 capacity.

18 16. Respondent Acting or Current Attorney General of the United States is the most
19 senior official in the U.S. Department of Justice (“DOJ”). They have the authority to interpret the
20 immigration laws and adjudicate removal cases. They delegate this responsibility to the
21 Executive Office for Immigration Review (“EOIR”), which administers the immigration courts
22 and the Board of Immigration Appeals (“BIA”). They are named in their official capacity.

23 17. Respondent Acting or Current Field Office Director of the San Francisco ICE
24 Field Office is responsible for the San Francisco Field Office of ICE with administrative
25 jurisdiction over Petitioner’s case. They are a legal custodian of Petitioner and are named in their
26 official capacity.

27 18. Respondent Acting or Current Director of ICE is responsible for ICE’s policies,
28

1 practices, and procedures, including those relating to the detention of immigrants. They are a
2 legal custodian of Petitioner and are named in their official capacity.

3 **STATEMENT OF FACTS**

4 19. Petitioner is a noncitizen currently detained by Respondents pending immigration
5 removal proceedings. Petitioner is pursuing the following claims in removal proceedings [*escriba*
6 *todos los aplicaciones de alivio que usted esta presentando en su caso de deportacion*]:

7 _____
8 _____
9 _____
10 20. Petitioner has been detained in DHS custody since _____
11 [*escriba el mes y año en que comenzó su detención por ICE*].

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

14 22. Pursuant to 8 U.S.C. § 1226(c), the Immigration Court lacks jurisdiction and
15 authority to provide Petitioner with a bond hearing to determine whether Petitioner’s detention is
16 justified. There is no statutory or regulatory pathway for Petitioner to seek a bond hearing before
17 a neutral decisionmaker.

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

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

23 _____
24 _____
25 _____
26 _____
27 _____

LEGAL BACKGROUND

1
2 25. “‘It is well established that the Fifth Amendment entitles [noncitizens] to due
3 process of law in deportation proceedings.’” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting
4 *Reno v. Flores*, 507 U.S. 292, 306 (1993)). “Freedom from imprisonment—from government
5 custody, detention, or other forms of physical restraint—lies at the heart of the liberty” that the
6 Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see also id.* at 718
7 (Kennedy, J., dissenting) (“Liberty under the Due Process Clause includes protection against
8 unlawful or arbitrary personal restraint or detention.”). This fundamental due process protection
9 applies to all noncitizens, including both removable and inadmissible noncitizens. *See id.* at 721
10 (Kennedy, J., dissenting) (“[B]oth removable and inadmissible [noncitizens] are entitled to be
11 free from detention that is arbitrary or capricious”).

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

18 27. Due process requires that the government provide bond hearings to noncitizens
19 facing prolonged detention. “The Due Process Clause foresees eligibility for bail as part of due
20 process” because “[b]ail is basic to our system of law.” *Jennings*, 138 S. Ct. at 862 (Breyer, J.,
21 dissenting) (internal quotation marks omitted). While the Supreme Court upheld the mandatory
22 detention of a noncitizen under Section 1226(c) in *Demore*, it did so based on the petitioner’s
23 concession of deportability and the Court’s understanding at the time that detentions under
24 Section 1226(c) are typically “brief.” *Demore*, 538 U.S. at 522 n.6, 528. Where a noncitizen has
25 been detained for a prolonged period or is pursuing a substantial defense to removal or claim to
26 relief, due process requires an individualized determination that such a significant deprivation of
27 liberty is warranted. *Id.* at 532 (Kennedy, J., concurring) (“[I]ndividualized determination as to
28

1 his risk of flight and dangerousness” may be warranted “if the continued detention became
2 unreasonable or unjustified”); *see also Jackson v. Indiana*, 406 U.S. 715, 733 (1972) (holding
3 that detention beyond the “initial commitment” requires additional safeguards); *McNeil v. Dir.*,
4 *Patuxent Inst.*, 407 U.S. 245, 249-50 (1972) (holding that “lesser safeguards may be appropriate”
5 for “short-term confinement”); *Hutto v. Finney*, 437 U.S. 678, 685-86 (1978) (holding that, in the
6 Eighth Amendment context, “the length of confinement cannot be ignored in deciding whether
7 [a] confinement meets constitutional standards”); *Reid v. Donelan*, 17 F.4th 1, 7 (1st Cir.
8 2021) (holding that “the Due Process Clause imposes some form of reasonableness limitation
9 upon the duration of detention” under section 1226(c)) (internal quotation marks omitted).

10
11 **A. Detention That Exceeds Six Months Without A Bond Hearing Is Unconstitutional.**

12 28. Detention without a bond hearing is unconstitutional when it exceeds six months.
13 *See Demore*, 538 U.S. at 529-30 (upholding only “brief” detentions under Section 1226(c),
14 which last “roughly a month and a half in the vast majority of cases in which it is invoked, and
15 about five months in the minority of cases in which the [noncitizen] chooses to appeal”);
16 *Zadvydas*, 533 U.S. at 701 (“Congress previously doubted the constitutionality of detention for
17 more than six months.”); *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1091 (9th Cir. 2022) (“[O]nce
18 the [noncitizen] has been detained for approximately six months, continuing detention becomes
19 prolonged” (cleaned up) (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. Cal. Jan. 7,
21 2019) (“[D]etention becomes prolonged after six months and entitles [Petitioner] to a bond
22 hearing”).

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

11
12 **B. Even Absent A Bright-Line Six-Month Standard, An Individualized Bond Hearing Is Required When Detention Becomes Unreasonably Prolonged.**

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

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

24 32. Petitioner faces severe hardships while detained by ICE. Petitioner is held in a
25 locked down facility, with limited freedom of movement and access to Petitioner’s family or
26 support network: “[T]he circumstances of their detention are similar, so far as we can tell,
27 to those in many prisons and jails.” *Jennings*, 138 S. Ct. at 861 (Breyer, J., dissenting); *accord*
28

1 *Chavez–Alvarez v. Warden York Cnty. Prison*, 783 F.3d 469, 478 (3d Cir. 2015); *Ngo v. INS*, 192
2 F.3d 390, 397-98 (3d Cir. 1999); *Sopo v. U.S. Att’y Gen.*, 825 F.3d 1199, 1218, 1221 (11th Cir.
3 2016). “And in some cases the conditions of their confinement are inappropriately poor”
4 including, for example, “invasive procedures, substandard care, and mistreatment, *e.g.*,
5 indiscriminate strip searches, long waits for medical care and hygiene products, and, in the case
6 of one detainee, a multiday lock down for sharing a cup of coffee with another detainee.”
7 *Jennings*, 138 S. Ct. at 861 (Breyer, J., dissenting) (citing Press Release, Off. of Inspector Gen.,
8 Dept. of Homeland Sec., *DHS OIG Inspection Cites Concerns With Detainee Treatment and*
9 *Care at ICE Detention Facilities* (Dec. 14, 2017)); *see also* Tom Dreisbach, *Government's own*
10 *experts found 'barbaric' and 'negligent' conditions in ICE detention*, NPR (Aug. 16, 2023, 5:01
11 AM) (reporting on the “‘negligent’ medical care (including mental health care), ‘unsafe and
12 filthy’ conditions, racist abuse of detainees, inappropriate pepper-spraying of mentally ill
13 detainees and other problems that, in some cases, contributed to detainee deaths” contained in
14 inspection reports prepared by experts from the Department of Homeland Security’s Office for
15 Civil Rights and Civil Liberties after examining detention facilities between 2017 and 2019).
16 Individuals at Golden State Annex Detention Facility have described receiving food
17 contaminated with insects (including cockroaches, flies, and spiders), hair, and other foreign
18 objects. *See* California Collaborative for Immigrant Justice, *Starving for Justice: The Denial of*
19 *Proper Nutrition in Immigration Detention*, at p. 7 (April 2022), *available at*
20 https://www.ccijjustice.org/files/ugd/733055_c43b1cbbdda341b894045940622a6dc3.pdf. At
21 Mesa Verde Detention Facility, over 80% of detained individuals who responded to one survey
22 said they had received expired food. *Id.*

23 33. The *Mathews* test for procedural due process claims balances: (1) the private
24 interest threatened by governmental action; (2) the risk of erroneous deprivation of such interest
25 and the value of additional or substitute safeguards; and (3) the government interest. *Mathews v.*
26 *Eldridge*, 424 U.S. 319, 335 (1976); *see also* *Salesh P.*, 2022 WL 17082375, at *8 (collecting
27 cases where judges in the Northern District of California applied the *Mathews* factors to a habeas
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1 petitioner’s due process claims). Here, each factor weighs in Petitioner’s favor, requiring this
2 Court to promptly hold a hearing to evaluate whether the government can justify their ongoing
3 detention.

4 34. First, Petitioner indisputably has a weighty interest in their liberty, the core
5 private interest at stake here. *Zadvydas*, 533 U.S. at 690 (“Freedom from imprisonment. . . lies at
6 the heart of the liberty [the Due Process Clause] protects.”). Petitioner, who is being held in
7 “incarceration-like conditions,” has an overwhelming interest here, regardless of the length of his
8 immigration detention, because “any length of detention implicates the same” fundamental
9 rights. *Rajnish v. Jennings*, No. 3:20-cv-07819-WHO, 2020 WL 7626414, at *6 (N.D. Cal. Dec.
10 22, 2020).

11 35. Second, Petitioner will suffer the erroneous risk of deprivation of their liberty
12 without an individualized evidentiary hearing. The risk of erroneous deprivation of their liberty
13 is high, as they have been detained since _____ [*escriba el mes y año en*
14 *que comenzó su detención por ICE*] without any evaluation of whether the government can
15 justify detention under their individualized circumstances. “[T]he risk of an erroneous
16 deprivation of liberty in the absence of a hearing before a neutral decisionmaker is substantial.”
17 *Diouf*, 634 F.3d at 1092. Conversely, “the probable value of additional procedural safeguards—
18 an individualized evaluation of the justification for his detention—is high, because Respondents
19 have provided virtually no procedural safeguards at all.” *Jimenez v. Wolf*, No. 19-cv-07996-NC,
20 2020 WL 510347, *3 (N.D. Cal. Jan. 30, 2020) (granting habeas petition for person who had
21 been detained for one year without a bond hearing).

22 36. Third, the government’s interest is very low in continuing to detain Petitioner
23 without providing any neutral review. *See Mathews*, 424 U.S. at 335. The specific interest at
24 stake here is not the government’s ability to continue to detain Petitioner, but rather the
25 government’s ability to continue to detain them for months on end without any individualized
26 review. *See Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 964 (N.D. Cal. 2019); *Henriquez v.*
27 *Garland*, No. 5:22-CV-00869-EJD, 2022 WL 2132919, at *5 (N.D. Cal. June 14, 2022). The
28

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

5 37. In sum, the *Mathews* factors establish that Petitioner is entitled to an evidentiary
6 hearing before a neutral adjudicator. Unsurprisingly, courts applying these standards in this
7 District and Circuit have repeatedly held that prolonged detention without a hearing before a
8 neutral adjudicator violates procedural due process for individuals who were held under the same
9 detention statute. See, e.g., *Romero Romero v. Wolf*, No. 20-CV-08031-TSH, 2021 WL 254435,
10 at *2, *5 (N.D. Cal. Jan. 26, 2021) (holding that the petitioner’s detention under § 1226(c) of just
11 over one year without a custody hearing was “not compatible with due process” and granting
12 habeas); *Jimenez*, 2020 WL 510347, at *1, *2, *4 (holding that the petitioner’s detention under §
13 1226(c) of just over one year without a custody hearing violated his due process rights and
14 granting habeas); *Gonzalez v. Bonnar*, No. 18-CV-05321-JSC, 2019 WL 330906, at *1, *5 (N.D.
15 Cal. Jan. 25, 2019) (holding that the petitioner’s detention under § 1226(c) for just over one year
16 without a custody hearing violates his due process rights and granting habeas). This Court should
17 so hold as well.

18 38. *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022), does not disturb this
19 result. In *Rodriguez Diaz*, the Ninth Circuit applied the *Mathews* test to hold that the detention of
20 a noncitizen detained under a different detention statute, 8 U.S.C. § 1226(a), did not violate
21 procedural due process. 53 F.4th at 1195. Unlike § 1226(c), § 1226(a) mandates that detained
22 individuals receive an individualized bond hearing at the outset of detention and provides for
23 further bond hearings upon a material change in circumstances. *See* 8 C.F.R. § 1003.19€. The
24 panel’s decision in *Rodriguez Diaz* was predicated on the immediate and ongoing availability of
25 this administrative process under § 1226(a). 53-F.4th at 1202 (“Section 1226(a) and its
26 implementing regulations provide extensive procedural protections that are unavailable under
27 other detention provisions . . .”). Unlike the petitioner in *Rodriguez Diaz*, Petitioner has no
28

1 statutory access to individualized review of his detention.

2 39. Alternatively, courts that apply a reasonableness test have considered four non-
3 exhaustive factors in determining whether detention is reasonable. *German Santos v. Warden*
4 *Pike Cnty. Corr. Facility*, 965 F.3d 203, 210-22 (3d Cir. 2020). The reasonableness inquiry is
5 “highly fact-specific.” *Id.* at 210. “The most important factor is the duration of detention.” *Id.* at
6 211; *see also Gonzalez v. Bonnar*, No. 18-CV-05321-JSC, 2019 WL 330906, at *1, *5 (N.D.
7 Cal. Jan. 25, 2019) (concluding that the petitioner’s detention under § 1226(c) for just over one
8 year without a custody hearing weighed strongly in favor of finding detention unreasonable, and
9 violated his due process rights and granting habeas). Duration is evaluated along with “all the
10 other circumstances,” including (1) whether detention is likely to continue, (2) reasons for the
11 delay, and (3) whether the conditions of confinement are meaningfully different from criminal
12 punishment. *Id.* at 211.

13 40. As noted, Petitioner has been detained for a substantial length of time, *supra* ¶ 20
14 and Petitioner’s detention is likely to continue as Petitioner asserts their right to seek
15 immigration relief, *supra* ¶ 19. Noncitizens should not be punished for pursuing “legitimate
16 proceedings” to seek relief. *See Masood v. Barr*, No. 19-CV-07623-JD, 2020 WL 95633, at *3
17 (N.D. Cal. Jan. 8, 2020) (“[I]t ill suits the United States to suggest that [Petitioner] could shorten
18 his detention by giving up these rights and abandoning his asylum application.”). Thus, courts
19 should not count a continuance against the noncitizen when they obtained it in good faith to
20 prepare their removal case, including efforts to obtain counsel. *See Hernandez Gomez*, 2023 WL
21 2802230, at *4 (“The duration and frequency of these requests [for continuances] do not
22 diminish his significant liberty interest in his release or his irreparable injury of continued
23 detention without a bond hearing.”). Moreover, Petitioner’s confinement and experiences at a
24 facility operated by a private, for-profit prison contractor, demonstrate that their conditions of
25 confinement are not meaningfully different from those of criminal punishment. *See supra* ¶¶ 10,
26 24, 32.

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

3 41. At a bond hearing, due process requires certain minimum protections to ensure
4 that a noncitizen’s detention is warranted: the government must bear the burden of proof by
5 clear and convincing evidence to justify continued detention, taking into consideration available
6 alternatives to detention; and, if the government cannot meet its burden, the noncitizen’s ability
7 to pay a bond must be considered in determining the appropriate conditions of release.

8 42. To justify prolonged immigration detention, the government must bear the
9 burden of proof by clear and convincing evidence that the noncitizen is a danger or flight risk.
10 *See Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011); *Aleman Gonzalez v. Barr*, 955 F.3d
11 762, 781 (9th Cir. 2020), *rev'd on other grounds by Garland v. Aleman Gonzalez*, 142 S. Ct.
12 2057, 213 L. Ed. 2d 102 (2022) (“*Jennings’s* rejection of layering [the clear and convincing
13 burden of proof standard] onto § 1226(a) *as a matter of statutory construction* cannot . . .
14 undercut our constitutional due process holding in *Singh*.”); *Doe v. Garland*, No. 3:22-CV-
15 03759-JD, 2023 WL 1934509, at *2 (N.D. Cal. Jan. 10, 2023) (applying *Singh* and holding that
16 the government shall bear the burden in a constitutionally required bond hearing in the §
17 1226(c) context); *Pham v. Becerra*, No. 23-CV-01288-CRB, 2023 WL 2744397, at *7 (N.D.
18 Cal. Mar. 31, 2023) (same); *Hernandez Gomez v. Becerra*, No. 23-CV-01330-WHO, 2023 WL
19 2802230, at *4 (N.D. Cal. Apr. 4, 2023) (same); *Martinez Leiva v. Becerra*, No. 23-CV-02027-
20 CRB, 2023 WL 3688097, at *9 (N.D. Cal. May 26, 2023); *I.E.S. v. Becerra*, No. 23-CV-03783-
21 BLF, 2023 WL 6317617, at *10 (N.D. Cal. Sept. 27, 2023) (same); *Singh Grewal v. Becerra*,
22 No. 23-CV-03621-JCS, 2023 WL 6519272, at *8 (N.D. Cal. Oct. 4, 2023) (same); *Gomez v.*
23 *Becerra*, No. 23-CV-03724-JCS, 2023 WL 6232236, at *9 (N.D. Cal. Sept. 25, 2023) (same);
24 *Henriquez v. Garland*, No. 23-CV-01025-AMO, 2023 WL 6226374, at *4 (N.D. Cal. Sept. 25,
25 2023) (same); *Rodriguez Picazo v. Garland*, No. 23-CV-02529-AMO, 2023 WL 5352897, at *7
26 (N.D. Cal. Aug. 21, 2023) (same).

27 43. Where the Supreme Court has permitted civil detention in other contexts, it has
28 relied on the fact that the Government bore the burden of proof by at least clear and convincing

1 evidence. *See United States v. Salerno*, 481 U.S. 739, 750, 752 (1987) (upholding pre-trial
2 detention after a “full-blown adversary hearing” requiring “clear and convincing evidence” and
3 “a neutral decisionmaker”); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (striking down
4 civil detention scheme that placed burden on the detainee); *Zadvydas*, 533 U.S. at 692 (finding
5 post-final-order custody review procedures deficient because, *inter alia*, they placed burden on
6 detainee).

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

23 **D. Due Process Requires Consideration Of Alternatives To Detention.**

24 45. Due process also requires consideration of alternatives to detention. The primary
25 purpose of immigration detention is to ensure a noncitizen’s appearance during civil removal
26 proceedings. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related to this purpose if
27 there are alternative conditions of release that could mitigate risk of flight. *See Bell v. Wolfish*,

1 441 U.S. 520, 538–39 (1979) (civil pretrial detention may be unconstitutionally punitive if it is
2 excessive in relation to its legitimate purpose). ICE’s alternatives to detention program—the
3 Intensive Supervision Appearance Program—has achieved extraordinary success in ensuring
4 appearance at removal proceedings, reaching compliance rates close to 100 percent. *Hernandez*
5 *v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017) (observing that ISAP “resulted in a 99%
6 attendance rate at all EOIR hearings and a 95% attendance rate at final hearings”). Thus,
7 alternatives to detention must be considered in determining whether prolonged incarceration is
8 warranted.

9 46. Due process likewise requires consideration of a noncitizen’s ability to pay a
10 bond. “Detention of an indigent ‘for inability to post money bail’ is impermissible if the
11 individual’s ‘appearance at trial could reasonably be assured by one of the alternate forms of
12 release.’” *Hernandez*, 872 F.3d at 990 (quoting *Pugh v. Rainwater*, 572 F.2d 1053, 1058 (5th
13 Cir. 1978) (en banc)). Therefore, when determining the appropriate conditions of release for
14 people detained for immigration purposes, due process requires “consideration of financial
15 circumstances and alternative conditions of release.” *Id.*; see also *Martinez v. Clark*, 36 F.4th
16 1219, 1231 (9th Cir. 2022) (“While the government had a legitimate interest in protecting the
17 public and ensuring the appearance of noncitizens in immigration proceedings, we held [in
18 *Hernandez*] that detaining an indigent alien without consideration of financial circumstances
19 and alternative release conditions was ‘unlikely to result’ in a bond determination ‘reasonably
20 related to the government’s legitimate interests.’ (citation omitted).”).

21 **CLAIM FOR RELIEF**

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

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

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

27 49. To justify Petitioner’s ongoing prolonged detention, due process requires that the
28

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

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

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Petitioner respectfully requests that this Court:

- 8 1) Assume jurisdiction over this matter;
 - 9 2) Issue a Writ of Habeas Corpus, hold a hearing before this Court if warranted,
10 determine that Petitioner's detention is not justified because the government has
11 not established by clear and convincing evidence that Petitioner presents a risk of
12 flight or danger in light of available alternatives to detention, and order
13 Petitioner's release (with appropriate conditions of supervision if necessary),
14 taking into account Petitioner's ability to pay a bond;
 - 15 3) In the alternative, issue a Writ of Habeas Corpus and order Petitioner's release
16 within 30 days unless Respondents schedule a hearing before an immigration
17 judge where: (1) to continue detention, the government must establish by clear
18 and convincing evidence that Petitioner presents a risk of flight or danger, even
19 after consideration of alternatives to detention that could mitigate any risk that
20 Petitioner's release would present; and (2) if the government cannot meet its
21 burden, the immigration judge order Petitioner's release on appropriate
22 conditions of supervision, taking into account Petitioner's ability to pay a bond;
 - 23 4) Issue a declaration that Petitioner's ongoing prolonged detention violates the Due
24 Process Clause of the Fifth Amendment;
 - 25 5) Award Petitioner his costs and reasonable attorneys' fees in this action as
26 provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412; and
 - 27 6) Grant such further relief as the Court deems just and proper.
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Date [*Fecha*]

Printed Name [*Nombre Impreso*]

Signature [*Firma*]

Detained in ICE Custody at: [check one / marque uno]

- Mesa Verde Detention Facility**, 425 Golden State Ave, Bakersfield, CA 93301
- Golden State Annex**, 611 Frontage Road, McFarland, CA 93250

1 Name / Nombre: _____

2 A Number / Número A: _____

3
4 Address / Dirección: _____

5 _____

6 ***PRO SE***

7
8 **UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

10
11 _____
12 [Full Name / Nombre Completo]

13
14 Petitioner,

15 v.

16 Case No. _____

17 Current or Acting Field Office Director, San
18 Francisco Field Office, United States
19 Immigration and Customs Enforcement;
20 Current or Acting Director, United States
21 Immigration and Customs Enforcement;
22 Current or Acting Secretary, United States
23 Department of Homeland Security; and
24 Current or Acting United States Attorney
25 General,

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

26 Respondents.

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

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

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

13
14
15 _____
16 Date [*Fecha*]

15 _____
16 Printed Name [*Nombre Impreso*]

17 _____
18 Signature [*Firma*]
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1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

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

5 ***INSTRUCCIONES PARA UNA APLICACION PARA PRISIONERO INDIGENTE***

6
7 You must submit to the court a completed Prisoner's Application to Proceed In Forma
8 Pauperis if you are unable to pay the entire filing fee and/or if you are asking to be appointed a
9 free attorney. Your application must include copies of the prisoner trust account statement
10 showing transactions for the last six months and a certificate of funds in prisoner's account,
11 signed by an authorized officer of the institution. Please write your answers in English.

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

17 **Habeas Actions**

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

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

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5 **UNITED STATES DISTRICT COURT**
6 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
7

8
9 _____
10 _____
11 [Full Name / Nombre Completo]

12 Petitioner,

13 v.

14
15 Current or Acting Field Office Director, San
16 Francisco Field Office, United States
17 Immigration and Customs Enforcement;
18 Current or Acting Director, United States
19 Immigration and Customs Enforcement;
20 Current or Acting Secretary, United States
21 Department of Homeland Security; and
22 Current or Acting United States Attorney
23 General,

19 Respondents.

Case No. _____

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

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

25 In support of this application, I provide true, correct, and complete responses to all of the
26 following questions:
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4. Do you own or have any interest in real estate, stocks, bonds, notes, retirement plans, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? (*¿Es usted propietario o tiene algún interés en bienes raíces, acciones, bonos, pagarés, planes de jubilación, automóviles u otras propiedades valiosas (excluyendo ropa y muebles comunes para el hogar)?*)

YES NO

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

_____ Approx. value: _____

_____ Approx. value: _____

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

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

_____ Approx. value: _____

_____ Approx. value: _____

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

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

_____ Amount per month: \$ _____

_____ Amount per month: \$ _____

_____ Amount per month: \$ _____

_____ Amount per month: \$ _____

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

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

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

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

9
10 _____ Date [*Fecha*]

10 _____ Printed Name [*Nombre Impreso*]

11
12 _____ A Number [*Número A*]

13
14 _____ Signature [*Firma*]

