

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,
 - (b) because you came to the United States seeking asylum and have been classified as an "arriving alien" on your Notice to Appear, or,
 - (c) because you received an "expedited removal order" and/or are not bond eligible due to a case called *Matter of M-S-*?

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 the things you file in immigration court, 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

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.

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.

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. These detention facilities are located in Bakersfield, CA and McFarland, CA, respectively, and fall under the jurisdiction of the United States District Court for the Eastern District of California. Therefore, you will file your petition for habeas corpus in federal court in the United States District Court for the Eastern 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. (Unlike in some other legal matters such as immigration court, you are not required to mail a paper copy of your filings to opposing counsel for a habeas petition in the Eastern District of California. Instead, the court clerk will serve the government for you)

Office of the Clerk

United States District Court for the Eastern District of California

Robert E. Coyle United States Courthouse

2500 Tulare Street, 1st Floor, Room 1501

Fresno, CA 93721

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

A petition for a writ of habeas corpus in an immigration case is filed in federal district court and can be filed electronically through the court's online system, known as CM/ECF.

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. On the caption page, after "Warden of the", please insert whether you are currently detained at "Golden State Annex" or "Mesa Verde"
- c. In **paragraphs 1, 6, and 13** please insert whether you are currently detained at "Golden State Annex" or "Mesa Verde."
- d. 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.
- e. In **paragraph 18**, briefly describe the claims you are pursuing in your immigration (removal) proceedings. 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.
- f. In **paragraphs 19 and 34**, write the month and year ICE began detaining you.
- g. In **paragraph 23**, 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.
 - Whether there have been any delays in your immigration case, such as continuances, how long each continuance lasted, and who requested the continuances (you, your attorney, the government, or the judge).

- 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.

- h. On **page 18**, write in the date, your name, and your signature.
- i. Also on **page 18**, 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,” the magistrate judge will make a “recommendation” about your case that will be reviewed and ultimately decided by a district judge. If you or the government disagree with the magistrate judge’s “recommendation,” both sides will have the opportunity to file arguments to persuade the district judge to make a different decision.

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 will likely 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 November 2024.

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

[Redacted] Plaintiff's Name/Case Number

Case No. [Redacted]

Petition for Writ of Habeas Corpus

Writs of the
Immigration Facility 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.

Respondent(s)

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

Plaintiff respectfully petitions this Honorable Court for a writ of habeas corpus to review his/her/their unlawful detention by Respondent(s), as follows:

1 Name / Nombre:

INTRODUCTION

2 A Number / Número A:

3 Address / Dirección:

5 **PRO SE**

Petitioner has been detained in immigration custody for over _____

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

11 [Full Name / Nombre Completo]

12 (A# _____ - _____ - _____)

14 Petitioner,

15 v.

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

15 Case No. _____

16 **Petition for Writ of Habeas Corpus**

22 Respondents.

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

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

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.

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
Management of the Judicial Conference of the United States. See Memorandum Re: Privacy
²⁶ Concern Regarding Social Security & Immigration Opinions (May 1, 2018), available at
https://www.uscourts.gov/sites/default/files/18-cv-1-suggestion_cacm_0.pdf; see also *Jorge M.F.*
²⁷ *v. Jennings*, 534 F. Supp. 3d 1050 n.1 (N.D. Cal. Apr. 14, 2021).

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).

VENUE

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

REQUIREMENTS OF 28 U.S.C. § 2243

19 10. The Court must grant the petition for writ of habeas corpus or issue an order to
20 show cause (“OSC”) to Respondents “forthwith,” unless Petitioner is not entitled to relief. 28
21 U.S.C. § 2243. If the Court issues an OSC, it must require Respondents to file a return “within
22 *three days* unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*
23
24 (emphasis added).

25 11. Courts have long recognized the significance of the habeas statute in protecting
26 individuals from unlawful detention. The Great Writ affords “*a swift and imperative remedy* in
27 all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis

1 added); *see also* *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (explaining that habeas statute
2 requires expeditious determination of petitions).

3 **PARTIES**

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

6 13. Respondent Warden of the _____ [escriba el nombre del centro
7 de detención donde está detenido] Detention Facility is Petitioner's immediate custodian at the
8 facility where Petitioner is detained. *See Doe*, 108 F.4th at 1194-97.

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

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

18 16. Respondent Acting or Current Field Office Director of the San Francisco ICE
19 Field Office is responsible for the San Francisco Field Office of ICE with administrative
20 jurisdiction over Petitioner's case. They are a legal custodian of Petitioner and are named in their
21 official capacity.

22 17. Respondent Acting or Current Director of ICE is responsible for ICE's policies,
23 practices, and procedures, including those relating to the detention of immigrants. They are a
24 legal custodian of Petitioner and are named in their official capacity.

25 **STATEMENT OF FACTS**

26 18. Petitioner is a noncitizen currently detained by Respondents pending immigration
27 removal proceedings. Petitioner is pursuing the following claims in removal proceedings [escriba
28

1 todos los aplicaciones de alivio que usted esta presentando en su caso de deportacion]:

2 _____
3 _____
4 _____

5 19. Petitioner has been detained in DHS custody since _____
6 [escriba el mes y año en que comenzó su detención por ICE].

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

9 21. The Immigration Court lacks jurisdiction and authority to provide Petitioner with
10 a bond hearing to determine whether Petitioner's detention is justified. See 8 U.S.C. §§ 1225(b);
11 1226(c). There is no statutory or regulatory pathway for Petitioner to seek a bond hearing before
12 a neutral decisionmaker.

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

16 23. Additional facts that support Petitioner's entitlement to relief are [escriba datos
17 adicionales sobre su detención que desee que el juez sepa]:

18 _____
19 _____
20 _____
21 _____
22 _____
23 _____
24 _____
25 _____
26 _____
27 _____
28 _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

LEGAL BACKGROUND

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

1 Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see also id.* at 718
2 (Kennedy, J., dissenting) (“Liberty under the Due Process Clause includes protection against
3 unlawful or arbitrary personal restraint or detention.”). This fundamental due process protection
4 applies to all noncitizens, including both removable and inadmissible noncitizens. *See id.* at 721
5 (Kennedy, J., dissenting) (“[B]oth removable and inadmissible [noncitizens] are entitled to be
6 free from detention that is arbitrary or capricious”).

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

13 26. Due process requires that the government provide bond hearings to noncitizens
14 facing prolonged detention. “The Due Process Clause foresees eligibility for bail as part of due
15 process” because “[b]ail is basic to our system of law.” *Jennings*, 138 S. Ct. at 862 (Breyer, J.,
16 dissenting) (internal quotation marks omitted). While the Supreme Court upheld the mandatory
17 detention of a noncitizen under Section 1226(c) in *Demore*, it did so based on the petitioner’s
18 concession of deportability and the Court’s understanding at the time that such detentions are
19 typically “brief.” *Demore*, 538 U.S. at 522 n.6, 528. Where a noncitizen has been detained for a
20 prolonged period or is pursuing a substantial defense to removal or claim to relief, due process
21 requires an individualized determination that such a significant deprivation of liberty is
22 warranted. *Id.* at 532 (Kennedy, J., concurring) (“[I]ndividualized determination as to his risk of
23 flight and dangerousness” may be warranted “if the continued detention became unreasonable or
24 unjustified”); *see also Jackson v. Indiana*, 406 U.S. 715, 733 (1972) (holding that detention
25 beyond the “initial commitment” requires additional safeguards); *McNeil v. Dir., Patuxent Inst.*,
26 407 U.S. 245, 249-50 (1972) (holding that “lesser safeguards may be appropriate” for “short-
27 term confinement”); *Hutto v. Finney*, 437 U.S. 678, 685-86 (1978) (holding that, in the Eighth
28

1 Amendment context, “the length of confinement cannot be ignored in deciding whether [a]
2 confinement meets constitutional standards”); *Reid v. Donelan*, 17 F.4th 1, 7 (1st Cir.
3 2021) (holding that “the Due Process Clause imposes some form of reasonableness limitation
4 upon the duration of detention” under section 1226(c)) (internal quotation marks omitted).

5

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

7 27. Detention without a bond hearing is unconstitutional when it exceeds six months.
8 See *Demore*, 538 U.S. at 529-30 (upholding only “brief” detentions under Section 1226(c),
9 which last “roughly a month and a half in the vast majority of cases in which it is invoked, and
10 about five months in the minority of cases in which the [noncitizen] chooses to appeal”);
11 *Zadvydas*, 533 U.S. at 701 (“Congress previously doubted the constitutionality of detention for
12 more than six months.”); *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1091 (9th Cir. 2022) (“[O]nce
13 the [noncitizen] has been detained for approximately six months, continuing detention becomes
14 prolonged” (cleaned up) (quoting *Diouf v. Napolitano*, 634 F.3d 1081, 1091 (9th Cir. 2011)));
15 *Rodriguez v. Nielsen*, Case No. 18-CV-04187-TSH, 2019 WL 7491555, at *6 (N.D. Cal. Jan. 7,
16 2019) (“[D]etention becomes prolonged after six months and entitles [Petitioner] to a bond
17 hearing”).

18 28. The recognition that six months is a substantial period of confinement—and is the
19 time after which additional process is required to support continued incarceration—is deeply
20 rooted in our legal tradition. With few exceptions, “in the late 18th century in America crimes
21 triable without a jury were for the most part punishable by no more than a six-month prison
22 term.” *Duncan v. Louisiana*, 391 U.S. 145, 161 & n.34 (1968). Consistent with this tradition, the
23 Supreme Court has found six months to be the limit of confinement for a criminal offense that a
24 federal court may impose without the protection afforded by jury trial. *Cheff v. Schnackenberg*,
25 384 U.S. 373, 380 (1966) (plurality opinion). The Court has also looked to six months as a
26 benchmark in other contexts involving civil detention. See *McNeil v. Dir., Patuxent Inst.*, 407
27 U.S. 245, 249, 250-52 (1972) (recognizing six months as an outer limit for confinement without

1 individualized inquiry for civil commitment). The Court has likewise recognized the need for
2 bright line constitutional rules in other areas of law. *See Maryland v. Shatzer*, 559 U.S. 98, 110
3 (2010) (holding that 14 days must elapse following invocation of *Miranda* rights before re-
4 interrogation is permitted); *Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 55-56 (1991) (holding
5 that a probable cause hearing must take place within 48 hours of warrantless arrest).

6

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

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

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

19 31. Petitioner faces severe hardships while detained by ICE. Petitioner is held in a
20 locked down facility, with limited freedom of movement and access to Petitioner's family or
21 support network: "[T]he circumstances of their detention are similar, so far as we can tell,
22 to those in many prisons and jails." *Jennings*, 138 S. Ct. at 861 (Breyer, J., dissenting); *accord*
23 *Chavez-Alvarez v. Warden York Cnty. Prison*, 783 F.3d 469, 478 (3d Cir. 2015); *Ngo v. INS*, 192
24 F.3d 390, 397-98 (3d Cir. 1999); *Sopo v. U.S. Att'y Gen.*, 825 F.3d 1199, 1218, 1221 (11th Cir.
25 2016). "And in some cases the conditions of their confinement are inappropriately poor"
26 including, for example, "invasive procedures, substandard care, and mistreatment, e.g.,
27 indiscriminate strip searches, long waits for medical care and hygiene products, and, in the case

1 of one detainee, a multiday lock down for sharing a cup of coffee with another detainee.”
2 Jennings, 138 S. Ct. at 861 (Breyer, J., dissenting) (citing Press Release, Off. of Inspector Gen.,
3 Dept. of Homeland Sec., *DHS OIG Inspection Cites Concerns With Detainee Treatment and*
4 *Care at ICE Detention Facilities* (Dec. 14, 2017)); *see also* Tom Dreisbach, *Government's own*
5 *experts found 'barbaric' and 'negligent' conditions in ICE detention*, NPR (Aug. 16, 2023, 5:01
6 AM) (reporting on the “negligent” medical care (including mental health care), ‘unsafe and
7 filthy’ conditions, racist abuse of detainees, inappropriate pepper-spraying of mentally ill
8 detainees and other problems that, in some cases, contributed to detainee deaths” contained in
9 inspection reports prepared by experts from the Department of Homeland Security’s Office for
10 Civil Rights and Civil Liberties after examining detention facilities between 2017 and 2019).
11 Individuals at Golden State Annex Detention Facility have described receiving food
12 contaminated with insects (including cockroaches, flies, and spiders), hair, and other foreign
13 objects. *See California Collaborative for Immigrant Justice, Starving for Justice: The Denial of*
14 *Proper Nutrition in Immigration Detention*, at p. 7 (April 2022), available at
15 https://www.ccijustice.org/_files/ugd/733055_c43b1cbbdda341b894045940622a6dc3.pdf. At
16 Mesa Verde Detention Facility, over 80% of detained individuals who responded to one survey
17 said they had received expired food. *Id.*

18 32. The *Mathews* test for procedural due process claims balances: (1) the private
19 interest threatened by governmental action; (2) the risk of erroneous deprivation of such interest
20 and the value of additional or substitute safeguards; and (3) the government interest. *Mathews v.*
21 *Eldridge*, 424 U.S. 319, 335 (1976); *see also Sho v. Current or Acting Field Off. Dir.*, No. 1:21-
22 CV-01812 TLN AC, 2023 WL 4014649, at *3 (E.D. Cal. June 15, 2023), *report and*
23 *recommendation adopted*, No. 1:21-CV-1812-TLN-AC, 2023 WL 4109421 (E.D. Cal. June 21,
24 2023) (applying *Mathews* factors to a habeas petitioner’s due process claims and collecting cases
25 doing the same). Here, each factor weighs in Petitioner’s favor, requiring this Court to promptly
26 hold a hearing to evaluate whether the government can justify their ongoing detention.

27 33. First, Petitioner indisputably has a weighty interest in their liberty, the core
28

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

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

18 35. Third, the government’s interest is very low in continuing to detain Petitioner
19 without providing any neutral review. See *Mathews*, 424 U.S. at 335. The specific interest at
20 stake here is not the government’s ability to continue to detain Petitioner, but rather the
21 government’s ability to continue to detain them for months on end without any individualized
22 review. See *Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 964 (N.D. Cal. 2019); *Henriquez v.*
23 *Garland*, No. 5:22-CV-00869-EJD, 2022 WL 2132919, at *5 (N.D. Cal. June 14, 2022). The
24 cost of providing an individualized inquiry is minimal. See *Henriquez*, 2022 WL 2132919, at *5.
25 The government has repeatedly conceded this fact. See *Lopez Reyes v. Bonnar*, 362 F. Supp. 3d
26 762, 777 (N.D. Cal. 2019); *Singh v. Barr*, 400 F. Supp. 3d 1005, 1021 (S.D. Cal. 2019);
27 *Marroquin Ambriz*, 420 F. Supp. 3d at 964.

1 36. In sum, the *Mathews* factors establish that Petitioner is entitled to an evidentiary
2 hearing before a neutral adjudicator. Unsurprisingly, courts applying these standards in this
3 Circuit have repeatedly held that prolonged detention without a hearing before a neutral
4 adjudicator violates procedural due process. See, e.g., *Romero Romero v. Wolf*, No. 20-CV-
5 08031-TSH, 2021 WL 254435, at *2, *5 (N.D. Cal. Jan. 26, 2021) (holding that the petitioner’s
6 detention of just over one year without a custody hearing was “not compatible with due process”
7 and granting habeas); *Jimenez*, 2020 WL 510347, at *1, *2, *4 (holding that the petitioner’s
8 detention of just over one year without a custody hearing violated his due process rights and
9 granting habeas); *Gonzalez v. Bonnar*, No. 18-CV-05321-JSC, 2019 WL 330906, at *1, *5 (N.D.
10 Cal. Jan. 25, 2019) (holding that the petitioner’s detention for just over one year without a
11 custody hearing violates his due process rights and granting habeas); *see also Singh v. Garland*,
12 No. 1:23-cv-01043-EPG-HC, 2023 WL 5836048, at *6 (E.D. Cal. 2023); *Sho v. Current or*
13 *Acting Field Office Director*, No. 1:21-cv-01812-TLN-AC, 2023 WL 4014649 (E.D. Cal. 2023).
14 This Court should so hold as well.

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

26 38. Alternatively, courts that apply a reasonableness test have considered four non-
27 exhaustive factors in determining whether detention is reasonable. *German Santos v. Warden*
28

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

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

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

26 40. At a bond hearing, due process requires certain minimum protections to ensure
27 that a noncitizen’s detention is warranted: the government must bear the burden of proof by
28

1 clear and convincing evidence to justify continued detention, taking into consideration available
2 alternatives to detention; and, if the government cannot meet its burden, the noncitizen's ability
3 to pay a bond must be considered in determining the appropriate conditions of release.

4 41. To justify prolonged immigration detention, the government must bear the
5 burden of proof by clear and convincing evidence that the noncitizen is a danger or flight risk.

6 See *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011); *Aleman Gonzalez v. Barr*, 955 F.3d
7 762, 781 (9th Cir. 2020), *rev'd on other grounds by Garland v. Aleman Gonzalez*, 142 S. Ct.
8 2057, 213 L. Ed. 2d 102 (2022) (“Jennings’s rejection of layering [the clear and convincing
9 burden of proof standard] onto § 1226(a) as a matter of statutory construction cannot . . .
10 undercut our constitutional due process holding in *Singh*.”); *Sho*, 2023 WL 4014649, at *5
11 (applying *Singh* and holding that the government shall bear the burden in a constitutionally
12 required bond hearing to remedy detention under a different statutory provision); *Singh*, 2023
13 WL 5836048, at *9 (same); *Doe v. Garland*, No. 3:22-CV-03759-JD, 2023 WL 1934509, at *2
14 (N.D. Cal. Jan. 10, 2023) (same); *Pham v. Becerra*, No. 23-CV-01288-CRB, 2023 WL
15 2744397, at *7 (N.D. Cal. Mar. 31, 2023) (same); *Hernandez Gomez v. Becerra*, No. 23-CV-
16 01330-WHO, 2023 WL 2802230, at *4 (N.D. Cal. Apr. 4, 2023) (same); *Martinez Leiva v.*
17 *Becerra*, No. 23-CV-02027-CRB, 2023 WL 3688097, at *9 (N.D. Cal. May 26, 2023); *I.E.S. v.*
18 *Becerra*, No. 23-CV-03783-BLF, 2023 WL 6317617, at *10 (N.D. Cal. Sept. 27, 2023) (same);
19 *Singh Grewal v. Becerra*, No. 23-CV-03621-JCS, 2023 WL 6519272, at *8 (N.D. Cal. Oct. 4,
20 2023) (same); *Gomez v. Becerra*, No. 23-CV-03724-JCS, 2023 WL 6232236, at *9 (N.D. Cal.
21 Sept. 25, 2023) (same); *Henriquez v. Garland*, No. 23-CV-01025-AMO, 2023 WL 6226374, at
22 *4 (N.D. Cal. Sept. 25, 2023) (same); *Rodriguez Picazo v. Garland*, No. 23-CV-02529-AMO,
23 2023 WL 5352897, at *7 (N.D. Cal. Aug. 21, 2023) (same).

24 42. Where the Supreme Court has permitted civil detention in other contexts, it has
25 relied on the fact that the Government bore the burden of proof by at least clear and convincing
26 evidence. See *United States v. Salerno*, 481 U.S. 739, 750, 752 (1987) (upholding pre-trial
27 detention after a “full-blown adversary hearing” requiring “clear and convincing evidence” and
28

Mathews test for due process

1 "a neutral decisionmaker"); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (striking down
2 civil detention scheme that placed burden on the detainee); *Zadvydas*, 533 U.S. at 692 (finding
3 post-final-order custody review procedures deficient because, *inter alia*, they placed burden on
4 detainee).

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

D. Due Process Requires Consideration Of Alternatives To Detention.

21 44. Due process also requires consideration of alternatives to detention. The primary
22 purpose of immigration detention is to ensure a noncitizen's appearance during civil removal
23 proceedings. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related to this purpose if
24 there are alternative conditions of release that could mitigate risk of flight. See *Bell v. Wolfish*,
25 441 U.S. 520, 538–39 (1979) (civil pretrial detention may be unconstitutionally punitive if it is
26 excessive in relation to its legitimate purpose). ICE's alternatives to detention program—the
27 ICE's alternatives to detention program—the

ISAP 防逃项目

1 Intensive Supervision Appearance Program—has achieved extraordinary success in ensuring
2 appearance at removal proceedings, reaching compliance rates close to 100 percent. *Hernandez*
3 v. Sessions, 872 F.3d 976, 991 (9th Cir. 2017) (observing that ISAP “resulted in a 99%
4 attendance rate at all EOIR hearings and a 95% attendance rate at final hearings”). Thus,
5 alternatives to detention must be considered in determining whether prolonged incarceration is
6 warranted.

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

CLAIM FOR RELIEF

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO

THE U.S. CONSTITUTION

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

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

25 48. To justify Petitioner’s ongoing prolonged detention, due process requires that the
26 government establish, at an individualized hearing before a neutral decisionmaker, that
27 Petitioner’s detention is justified by clear and convincing evidence of flight risk or danger,

1 taking into account whether alternatives to detention could sufficiently mitigate that risk.

2 49. For these reasons, Petitioner's ongoing prolonged detention without a hearing
3 violates due process.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Petitioner respectfully requests that this Court:

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

26 70天內必須release除非 schedule a bond hearing
27
28

1 Date [Fecha]

2 Printed Name [Nombre Impreso]

3 Address / Dirección

4 Signature [Firma]

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

- 6
- 7 **Mesa Verde Detention Facility**, 425 Golden State Ave, Bakersfield, CA 93301
- 8 **Golden State Annex**, 611 Frontage Road, McFarland, CA 93250

9

10

11

12

13

14 Petitioner,

15

16

17

18

19

20

21

22

23

24

25

26

27

28

Petitioner (your name / su nombre)

I hereby petition for writ of habeas corpus under 28 U.S.C. § 2241 challenging the continued
detention by Respondents. Petitioner was detained by Respondents at the

1 Name / Nombre: _____
2 A Number / Número A: _____
3 Address / Dirección: _____
4

5 for a writ of habeas corpus under Petitioner's release
6 Petitioner moves the Court to appoint counsel to represent Petitioner in this case.
7

PRO SE

8 **UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

10 _____
11 _____
12 [Full Name / Nombre Completo]

13 _____
14 Petitioner,

15 v.
16

17 Warden of the _____
18 Detention Facility, Current or Acting Field
19 Office Director, San Francisco Field Office,
20 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,

21 Respondents.
22

Location

Case No. _____

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

23
24 Petitioner [your name / su nombre] _____ has
25 filed a petition for writ of habeas corpus under 28 U.S.C. § 2241 challenging Petitioner's
26 indefinite detention by Respondents. Petitioner was detained by Immigration and Customs
27

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 justice 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 Date [Fecha]

Printed Name [Nombre Impreso]

16 _____
17 _____
18 Signature [Firma]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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

INSTRUCCIONES PARA UNA APLICACION PARA PRISIONERO INDIGENTE

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

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

Habeas Actions

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

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

后面都是 indigent 形式 的 habeas ,
为了省下 \$5 的 filing fee , 不得不 , 不用了解