UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Alfredo PARADA CALDERON,

Petitioner,

v.

Drew BOSTOCK, Field Office Director of Enforcement and Removal Operations, Seattle Field Office, Immigration and Customs Enforcement; Alejandro MAYORKAS, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Merrick GARLAND, U.S. Attorney General; Bruce SCOTT, Warden of Northwest ICE Processing Center,

Respondents.

Case No. 2:24-cv-1619

Agency No. A 092-078-794

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

INTRODUCTION

1. Petitioner Alfredo Parada Calderon is a lawful permanent resident who was detained by Respondents and placed in removal proceedings because of criminal convictions from 1992. Due to those convictions, the Immigration and Nationality Act (INA) rendered him ineligible for a bond hearing. However, removal proceedings have now lasted for a year, and Respondents have continued to detain him without any type of custody hearing, despite the fact there is no end in sight to this prolonged detention.

2. Mr. Parada is a citizen of El Salvador who entered the United States as a child around 1980, along with his family. In 1990, he became a lawful permanent resident. His family members, including his mother and siblings, continue to live in the United States and have supported him through years of state parole and immigration proceedings.

3. From 1992 until 2023, Mr. Parada served a sentence for murder and attempted murder in California. The California Board of Parole Hearings (CBPH) authorized his release on parole in October 2023. At that time, he was transferred to Immigration and Customs Enforcement (ICE) custody, where he has remained since.

4. Mr. Parada faced the potential for life in prison because of the sentence he received in 1992. Yet he was awarded parole based on a voluminous record that included dozens of support letters, dozens of certificates reflecting his efforts to educate and better himself, and sincere, demonstrated remorse.

5. In granting the parole, the CBPH stated that it observed "genuine" change in Mr. Parada, and that "the overwhelming mitigating factors outweigh the aggravating" factors, thus finding that he was "suitable for parole."

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6. Since entering ICE custody, the Immigration Judge (IJ) adjudicating Mr. Parada's case has noted the same, observing that during his merits hearing, Mr. Parada testified "from a place of great sincerity -- and really, truly, from [his] heart," and that she "sincerely believe[d] that [Mr. Parada has] been rehabilitated."

7. Mr. Parada's past convictions render him subject to mandatory detention under 8 U.S.C. § 1226(c) and make him statutorily ineligible for a bond hearing.

8. The Due Process Clause, however, entitles individuals—including those convicted of very serious crimes—to more. Indeed, in *Zadvydas v. Davis*, the seminal case on due process protections for noncitizens in long-term immigration detention, the Court confronted the cases of noncitizens convicted of "drug crimes, attempted robbery, attempted burglary, and theft," as well as "a gang-related shooting" resulting in a "manslaughter" conviction. 533 U.S. 678, 684–85 (2001). The Court nevertheless declared that "[t]he Fifth Amendment's Due Process Clause forbids the Government to 'deprive' *any* 'person of liberty without due process of law. Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Id.* at 690 (emphasis added) (ellipses and brackets omitted) (quoting U.S. Const. amend. V).

9. The same is true here. Mr. Parada accordingly asks the Court to declare § 1226(c) unconstitutional as applied to him at this stage of his proceedings, and to order a bond hearing where the government must prove that his continued detention is justified. Such a hearing will allow Mr. Parada to demonstrate his rehabilitation while allowing ICE to argue that his past serious convictions warrant his continued incarceration.

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JURISDICTION

10. Petitioner is in the physical custody of Respondents and ICE, an agency within the Department of Homeland Security (DHS). Mr. Parada is detained at the Northwest ICE Processing Center (NWIPC) in Tacoma, Washington and is under the direct control of Respondents and their agents.

11. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

12. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

13. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

14. Nothing in the INA deprives this Court of jurisdiction, including 8 U.S.C. §§ 1252(b)(9), 1252(f)(1), or 1226(e). Congress has preserved judicial review of challenges to prolonged immigration detention. *See Jennings v. Rodriguez*, 583 U.S. 281, 292–96 (2018).

VENUE

15. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Western District of Washington, the judicial district in which Mr. Parada currently is in custody.

16. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Western District of Washington.

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PARTIES

17. Petitioner Alfredo Parada Calderon is a citizen of El Salvador who entered the United States around 1980. He adjusted status to that of a lawful permanent resident in 1990. He has been in the custody of DHS since October 2023.

18. Respondent Drew Bostock is the Director of the Seattle Field Office of ICE's Enforcement and Removal Operations division. As such, Mr. Bostock is Petitioner's immediate custodian and is responsible for his detention. He is named in his official capacity.

19. Respondent Alejandro Mayorkas is the Secretary of the DHS. He is responsible for the implementation and enforcement of the INA, and oversees ICE, which is responsible for Mr. Parada's detention. Mr. Mayorkas has ultimate custodial authority over Petitioner and is sued in his official capacity.

20. Respondent DHS is the federal agency responsible for implementing and enforcing the INA, including the detention of noncitizens.

21. Respondent Merrick Garland is the Attorney General of the United States. He is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. He is sued in his official capacity.

22. Respondent Bruce Scott is employed by the private corporation The Geo Group, Inc., as Warden of the NWIPC, where Petitioner is detained. He has immediate physical custody of Mr. Parada. He is sued in his official capacity.

FACTUAL ALLEGATIONS

Mr. Parada's Upbringing

23. Mr. Parada was born in 1973 and entered the United States sometime around 1980 with his three older brothers and younger sister. The children entered with their parents, who had

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immigrated a few years prior and returned to bring the children to the United States. The family resided in Los Angeles, California during Mr. Parada's youth.

24. Mr. Parada became a lawful permanent resident in February 1990.

25. Mr. Parada experienced various traumatic events throughout his youth.

26. Prior to his family's departure from El Salvador, Mr. Parada witnessed the violence of the civil war there.

27. Violence also occurred in Mr. Parada's home. Mr. Parada's father drank excessively, hit Mr. Parada, and engaged in other domestic violence. His father was murdered during a robbery when Mr. Parada was nine years old.

28. In the years following his father's death, Mr. Parada gravitated towards individuals in his neighborhood who influenced him in negative ways and exhibited antisocial and criminal behavior. Eventually, Mr. Parada joined a street gang called the Drifters 23 Malos.

29. Mr. Parada was shot by rival gang members sometime in the late 1980s.

Mr. Parada's Criminal Conviction, Transformation, and Parole

30. On August 27, 1990, at the age of sixteen, Mr. Parada discharged a firearm at a group of teenagers, killing one of them. Two others were injured. He was arrested shortly after the shooting.

31. In 1992, Mr. Parada was convicted of one count of murder and three counts of attempted murder. The California state court sentenced him to 34 years and eight months to life in prison with the possibility of parole.

32. During the following decades, Mr. Parada underwent a transformation.

33. For many years, while he was in prison, Mr. Parada formed part of the Mexican Mafia prison gang. By his own admission, he was an active participant in the gang's activity for a time.

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34. However, Mr. Parada eventually began to take stock of his life and recognized that he needed to make changes to the person he was. He started to take classes, participate in counseling, and pursue other opportunities to better himself while in prison. Ultimately, Mr. Parada renounced his gang membership.

35. In 2023, Mr. Parada received parole from the California Board of Parole Hearings.

36. Mr. Parada's parole submission reflected that, during his time in prison, he completed his GED, attended dozens of other classes, participated in counseling programs, and developed skills to make him employable upon release. *See* Decl. of Sydney Maltese, Ex. A at 52–102.

37. Counselors, prison officials, correctional officers, and program administrators at the prison and in programs for released people recognized the transformation that came over Mr. Parada. This recognition was reflected in the dozens of letters such individuals submitted in support of Mr. Parada's most recent parole application in 2023. *Id.* at 1–40, 52, 70, 77, 81, 88, 90, 98, 102.

38. Mr. Parada's self-reflection and sincere remorse also led him to apologize to the family members and victims of the violence he inflicted in 1990. *Id.* at 127–150.

39. Mr. Parada's family stood by him throughout his time in prison. In 2023, as he prepared to apply for parole, his siblings and mother provided letters of support, promising to help him once released. *Id.* at 105, 107, 109–10, 122. They also submitted additional materials in support of Mr. Parada in his removal proceedings. *Id.* at 159–226.

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40. Other community members also submitted support letters, indicating they would help walk alongside Mr. Parada if he was released by providing spiritual support or job opportunities. *Id.* at 106, 108, 111–21, 123–24.

41. Mr. Parada also submitted a detailed release plan with his parole application, explaining his day to day, week to week, and month to month goals, his methods to avoid recidivism, and other plans to maintain a healthy and stable emotional life. *Id.* at 229–69.

42. At his parole hearing in 2023, the CBPH concluded that Mr. Parada "does not pose an unreasonable risk of danger if released." *Id.* Ex. B at 2. In reaching that conclusion, the panel noted the "genuine" change that had come over him, and that "the overwhelming mitigating factors outweigh the aggravating" factors. *Id.* at 6.

43. Accordingly, on October 2, 2023, Mr. Parada was granted parole. *Id.* Ex. C.

44. The CBPH's decision indicates Mr. Parada is no longer a danger to the community.

45. Pursuant to California's parole system, "the paramount consideration for both the Board and the Governor under the governing statutes is whether the inmate currently poses a threat to public safety and thus may not be released on parole." *In re Lawrence*, 190 P.3d 535, 552 (Cal. 2008).

46. The "relevant inquiry" when determining "whether an inmate poses a current danger" is "whether the circumstances of the commitment offense, when considered in light of other facts in the record, are such that they continue to be predictive of current dangerousness many years after commission of the offense." *In re Shaputis*, 190 P.3d 573, 581 (Cal. 2008) (citation omitted). "This inquiry is, by necessity and by statutory mandate, an individualized one, and cannot be undertaken simply by examining the circumstances of the crime in isolation,

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without consideration of the passage of time or the attendant changes in the inmate's psychological or mental attitude." *Id.*

47. As a result, by granting parole in Mr. Parada's case, the CBPH made an "individualized" assessment that Mr. Parada does not "pose[] an unreasonable risk of danger to society if released." *Id.* at 581–82; *see also* Maltese Decl. Exs. B–C.

Mr. Parada's Immigration Case Following Parole

48. In October 2023, after being granted parole, Mr. Parada was transferred to the custody of ICE. At the same time, ICE commenced removal proceedings against Mr. Parada.

49. Mr. Parada has remained in ICE custody since his transfer from state criminal custody.

50. Mr. Parada is subject to mandatory detention under 8 U.S.C. § 1226(c).

51. In removal proceedings, the IJ found that Mr. Parada is removable under the INA because of his convictions.

52. The convictions also foreclosed many forms of available relief.

53. As a result, the IJ concluded that Mr. Parada's only available relief was deferral of removal under the Convention Against Torture (CAT).

54. Mr. Parada sought deferral of removal to El Salvador under CAT by asserting that his past gang affiliations would result in his imprisonment and torture in El Salvador.

55. Currently, El Salvador's government has declared a state of emergency that suspends many civil rights, has resulted in the imprisonment of tens of thousands of people based on suspected gang membership, and has produced overflowing prisons that are ill-equipped to handle the influx.

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56. Human rights organizations and the U.S. Department of State have noted reports of many abuses by Salvadoran authorities against the tens of thousands of people now detained in the country's prisons.

57. At his merits hearing on February 1, 2024, Mr. Parada proceeded pro se.

58. On February 7, 2024, the IJ denied Mr. Parada's application for deferral of removal under CAT.

59. Despite denying his application, the IJ concluded that Mr. Parada's testimony and the evidence he submitted demonstrated his rehabilitation. She observed that the law severely limited the relief from removal she could consider.

60. Specifically, the IJ stated, "You have spoken really, really eloquently during these proceedings here in immigration court. I really sincerely believe that you have been rehabilitated. And I truly mean that, sir. So, I really do thank you for what you have shared with the court, because I can tell that it comes from a place of great sincerity – and really, truly from your heart." Maltese Decl. Ex. D at 10.

61. The IJ then went on to explain again that Mr. Parada was eligible only for deferral of removal under CAT and that she was denying the application. *Id.* at 10–11.

62. On or around February 12, 2024, Mr. Parada filed an appeal with the Board of Immigration Appeals (BIA or Board). He was represented by counsel during the appeal.

63. The BIA vacated the IJ's decision and remanded the case to the IJ on June 20, 2024. In its decision, the BIA ordered the IJ to reconsider the evidence in Mr. Parada's case. *Id.* Ex. E.

64. Subsequently, on June 27, 2024, the IJ again denied Mr. Parada's application for deferral of removal under CAT.

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65. At the hearing, Mr. Parada again proceeded pro se after the IJ denied his request for a continuance to secure counsel on remand. The IJ then declined to reopen the record to allow him to submit additional evidence regarding El Salvador's continued state of emergency targeting suspected gang members.

66. Mr. Parada filed a notice of appeal of that decision on July 10, 2024. The appeal remains pending before the BIA. *Id.* Ex. F.

67. Throughout his appeals and lengthy time in immigration custody, Mr. Parada has never received a hearing before a neutral decisionmaker where ICE was required to justify his continued detention by clear and convincing evidence.

LEGAL FRAMEWORK

68. The Due Process Clause of the Fifth Amendment provides Mr. Parada with important protections regarding his detention. As the Supreme Court has explained, "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690.

69. The INA authorizes three basic forms of detention for noncitizens in removal proceedings. The first is detention for noncitizens in regular, non-expedited removal proceedings. *See* 8 U.S.C. § 1226(a), (c). Individuals in § 1226(a) detention are entitled to a bond hearing at the outset of their detention, while noncitizens who have committed certain crimes are subject to mandatory detention. *See id.* § 1226(c). Second, the INA also provides for mandatory detention for noncitizens in expedited removal proceedings. *Id.* § 1225(b)(1). Last, the statute provides for detention for noncitizens who are subject to a final removal order. *Id.* § 1231(a)(6). *See also Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1111–13 (W.D. Wash. 2019) (providing overview of INA's detention authorities).

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70. In *Demore v. Kim*, 538 U.S. 510 (2003), the Supreme Court denied a facial challenge to detention under § 1226(c) which asserted that the statute was unconstitutional because it imposed mandatory detention without a custody hearing. However, the Supreme Court emphasized that such detention was typically "brief" in length and lasted "roughly a month and a half in the vast majority of cases . . . and about five months in the minority of cases in which the [non-citizen] chooses to appeal." 538 U.S. at 513, 530.

71. Notably, Justice Kennedy—who provided the fifth vote for the majority on the constitutional issue—penned a concurrence that reasoned detention may eventually become sufficiently lengthy that a hearing to justify continued detention is constitutionally required. 538 U.S. at 532–33 (Kennedy, J., concurring).

72. In *Jennings v. Rodriguez*, 583 U.S. 281 (2018), the Supreme Court again addressed § 1226(c). There, the Court held that, as a matter of statutory interpretation, § 1226(c) does not require the government to provide a detainee subjected to prolonged detention with a bond hearing. Significantly, the Court did not reach the constitutional question of whether the Due Process Clause requires an opportunity to test the government's justification for detention once detention becomes prolonged.

73. Since the Supreme Court's *Rodriguez* decision, the Ninth Circuit has expressed "grave doubt" that "any statute that allows for arbitrary prolonged detention without any process is constitutional or that those who founded our democracy precisely to protect against the government's arbitrary deprivation of liberty would have thought so." *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018).

74. To guard against such arbitrary detention and to guarantee the right to liberty, due process requires "adequate procedural protections" that ensure the government's asserted

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justification for a noncitizen's physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted).

75. In the immigration context, the Supreme Court has recognized two primary purposes for civil detention: to mitigate the risks of danger to the community and to prevent flight. *Id*.; *see also Demore*, 538 U.S. at 522, 528. The government may not detain a noncitizen based on other justifications.

76. As a result, where the government detains a noncitizen for a prolonged period or where the noncitizen pursues a substantial defense to removal or claim to relief, due process requires an individualized hearing before a neutral decisionmaker to determine whether detention remains reasonably related to its purpose. *Demore*, 538 U.S. at 532 (Kennedy, J., concurring) (stating that an "individualized determination as to [a noncitizen's] risk of flight and dangerousness" may be warranted "if the continued detention became unreasonable or unjustified"); *cf. Jackson v. Indiana*, 406 U.S. 715, 733 (1972) (detention beyond the "initial commitment" requires additional safeguards); *McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249–50 (1972) (noting that "lesser safeguards may be appropriate" for "short-term confinement"); *Hutto v. Finney*, 437 U.S. 678, 685-86 (1978) (observing, in Eighth Amendment context, that "the length of confinement cannot be ignored in deciding whether [a] confinement meets constitutional standards").

77. Detention without a bond hearing is unconstitutional when it becomes prolonged. *See, e.g.*, *Rodriguez* 909 F.3d at 256; *see also Zadvydas*, 533 U.S. at 701 ("Congress previously doubted the constitutionality of detention for more than six months.").

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78. The recognition that six months constitutes a substantial period of confinement that qualifies as prolonged detention is deeply rooted in our legal tradition. With only a few exceptions, "in the late 18th century in American crimes triable without a jury were for the most part punishable by no more than a six-month prison term." *Duncan v. Louisiana*, 391 U.S. 145, 161 & n.34 (1968). Consistent with this tradition, the Supreme Court has found six months to be the limit of confinement for a criminal offense that a federal court may impose without the protection afforded by a jury trial. *Cheff v. Schnackenberg*, 384 U.S. 373, 380 (1966) (plurality opinion). The Court has also looked to six months as a benchmark in other contexts involving civil detention. *See McNeil*, 407 U.S. at 249, 250–52 (recognizing six months as an outer limit for confinement without individualized inquiry for civil commitment).

79. In addition, both the Supreme Court and Ninth Circuit have long made clear that a significant time in civil detention warrants an opportunity to test the legality of that detention. As the Ninth Circuit has explained in the pretrial detention context—which, like here, involves civil detention—"[i]t is undisputed that at some point, [civil] detention can 'become excessively prolonged, and therefore punitive,' resulting in a due process violation." *United States v. Torres*, 995 F.3d 695, 708 (9th Cir. 2021) (quoting *United States v. Salerno*, 481 U.S. 739, 747 n.4 (1987)). That is especially true where the initial detention decision lacks significant (or any) safeguards, as is the case here. *See O'Connor v. Donaldson*, 422 U.S. 563, 574-75 (1975) ("Nor is it enough that Donaldson's original confinement was founded upon a constitutionally adequate basis, if in fact it was, because even if his involuntary confinement was initially permissible, it could not constitutionally continue after that basis no longer existed."); *McNeil*, 407 U.S. at 249–50 (explaining that as the length of civil detention increases, more substantial safeguards are required).

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80. These principles have "[o]verwhelmingly[] [led the] district courts that have considered the constitutionality of prolonged mandatory detention—including . . . other judges in this District[ ] [to] agree that prolonged mandatory detention pending removal proceedings, without a bond hearing, will—at some point—violate the right to due process." *Diaz Reyes v. Wolf,* No. C20-0377-JLR-MAT, 2020 WL 6820903, at *3 (W.D. Wash. Aug. 7, 2020) (internal quotation marks omitted), *R&R adopted as modified*, No. C20-0377JLR, 2020 WL 6820822 (W.D. Wash. Nov. 20, 2020). Indeed, "[i]n the context of immigration detention, it is well-settled that due process requires adequate procedural protections to ensure that the government's asserted justification for physical confinement outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Hernandez v. Sessions*, 872 F.3d 976, 990–91 (9th Cir. 2017)

81. Courts assessing whether a detained noncitizen is entitled to a hearing as a matter of due process typically employ one of two tests: a multi-factor test or the test found in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Courts in this district generally employ a multi-factor test. *See Djelassi v. ICE Field Off. Dir.*, 434 F. Supp. 3d 917, 929 (W.D. Wash. 2020). Mr. Parada merits a bond hearing under either test.

82. Under the multi-factor test, courts look to "(1) the total length of detention to date; (2) the likely duration of future detention; (3) the conditions of detention; (4) delays in the removal proceedings caused by the detainee; (5) delays in the removal proceedings cause by the government; and (6) the likelihood that the removal proceedings will result in a final order of removal." *Banda*, 385 F. Supp. 3d at 1106 (citation omitted). The length of detention is the "most important factor." *Id.* at 1118.

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83. The application of this test demonstrates Mr. Parada is entitled to a bond hearing. He has been detained for a year and his removal proceedings have many months, if not years, to go before they are complete. BIA appeals typically take many months to complete. And even if the appeal is denied, Mr. Parada is entitled to file a petition for review with the Ninth Circuit Court of Appeals, which is likely to last another year. Moreover, if he prevails on his appeal to the BIA, as he did the first time (on a basis similar to his new appeal), the case will inevitably be remanded back to the immigration court for further proceedings.

84. Courts regularly afford noncitizens a bond hearing after facing similar periods of detention. *See, e.g.*, *Banda*, 385 F. Supp. 3d at 1118 (noting that 17 months of detention was a "very long time" that "strongly favor[ed] granting a bond hearing); *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022) ("Petitioner has been in immigration detention since September 10, 2021—approximately one year. District courts have found shorter lengths of detention pursuant to § 1226(c) without a bond hearing to be unreasonable."); *Gonzalez v. Bonnar*, No. 18-cv-05321-JSC, 2019 WL 330906, at *5 (N.D. Cal. Jan. 25, 2019) (detention under § 1226(c) of just over a year that would last several more months favored granting bond hearing); *Martinez v. Clark*, No. C18-1669-RAJ-MAT, 2019 WL 5968089, at *1 (W.D. Wash. May 23, 2019), *R&R adopted*, No. 18-CV-01669-RAJ, 2019 WL 5962685 (W.D. Wash. Nov. 13, 2019) (detention of 13 months of individual detained under § 1226(c) favored granting bond hearing); *Cabral v. Decker*, 331 F. Supp. 3d 255, 261 (S.D.N.Y. 2018) (same, for 7 months); *Liban M.J. v. Sec'y of DHS,* 367 F. Supp. 3d 959, 963 (D. Minn. 2019) (same, for 12 months).

85. The punitive and restrictive conditions at NWIPC also support affording Mr. Parada a hearing. Those conditions "are similar . . . to those in many prisons and jails," despite Mr. Parada's ostensible status as a "civil" detainee. *Diaz Reyes*, 2020 WL 6820903, at *7

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(alteration in original). Mr. Prada is confined to his dorm for 22 hours a day, and provided only one hour outside for exercise and one hour in an indoor recreation room. Decl. of Alfredo Parada Calderon ¶ 8. There are no classes or other education opportunities, and Mr. Parada considers the food worse than what he received in state prison. *Id.* ¶¶ 10, 12. Notably, even though Mr. Parada is ostensibly in "civil" detention, he received far more time outside and far more opportunities for self-edification while in criminal custody. *Id.* ¶¶ 9–14. Reports by independent outside entities have similarly documented problems with food, medical neglect, cleanliness, and other issues at NWIPC. *See generally* Maltese Decl. Ex. G. Finally, in state prison, Mr. Parada also able to visit with family, but now cannot do so because they reside in California. Parada Decl. ¶ 11.

86. The delay factors are neutral in this case.

87. Finally, Mr. Parada has made a good faith defense to his removal based on the harm he is likely to face in El Salvador. The BIA's initial decision to remand for further consideration of the record underscores this fact.

88. As a result, due process demands that Mr. Parada receive a bond hearing.

89. A similar result occurs under application of the test in *Mathews*. That test looks to (1) the petitioner's interest, (2) the value of additional procedural protections, and (3) any burden on the government in providing additional protections. 424 U.S. at 335.

90. Here, Mr. Parada's interest is at its zenith: he has a powerful interest in his physical liberty, as the Supreme Court, the Ninth Circuit, and this Court have repeatedly made clear. *See supra* ¶¶ 73–80.

91. Second, additional protections are warranted here. The statute affords Mr. Parada no protection whatsoever and requires his detention. *See* 8 U.S.C. § 1226(c).

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92. Finally, any burden on the government is minimal. Bond proceedings are short, informal hearings where an IJ typically receives evidence at a hearing and issues an oral ruling. Such hearings do not entail any significant expenditure of government resources. *See* Imm. Ct. Practice Manual ch. 9.3(e).

93. Accordingly, application of the *Mathews* test also requires a bond hearing to justify further detention.

94. Due process also requires certain minimal procedures at Mr. Parada's bond hearing. First, the government must bear the burden of proof by clear and convincing evidence to justify continued detention. Second, the decisionmaker must consider available alternatives to detention. Finally, if the government cannot meet its burden, a decisionmaker must assess a noncitizen's ability to pay a bond when determining the appropriate conditions of release.

95. To justify prolonged immigration detention, the government must bear the burden of proof by clear and convincing evidence that the noncitizen is a danger or flight risk. *See Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011). The same is true for other contexts in which the Supreme Court has permitted civil detention; in those cases, the Court has relied on the fact that the government bore the burden of proof by at least clear and convincing evidence. *See Salerno*, 481 U.S. at 750, 752 (upholding pre-trial detention where the detainee was afforded a "full-blown adversary hearing," requiring "clear and convincing evidence" before a "neutral decisionmaker"); *Foucha v. Louisiana*, 504 U.S. 71, 81–83 (1992) (striking down civil detention scheme that placed burden on the detainee); *Zadvydas*, 533 U.S. at 692 (finding post-final-order custody review procedures deficient because, *inter alia*, they placed burden on detainee); *see also Banda*, 385 F. Supp. 3d 1120–21 (requiring application of clear and convincing evidence standard).

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96. The requirement that the government bear the burden of proof by clear and convincing evidence is also supported by application of the three-factor balancing test from *Mathews*.

97. First, prolonged incarceration deprives noncitizens of a profound liberty interest—one that always requires some form of procedural protections. *See Foucha*, 504 U.S. at 80 ("It is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." (citation omitted)).

98. Second, the risk of error is great where the government is represented by trained attorneys and detained noncitizens are often unrepresented and frequently lack English proficiency. *See Santosky v. Kramer*, 455 U.S. 745, 762–63 (1982) (requiring clear and convincing evidence at parental termination proceedings because "numerous factors combine to magnify the risk of erroneous factfinding," including that "parents subject to termination proceedings are often poor, uneducated, or members of minority groups" and "[t]he State's attorney usually will be expert on the issues contested"). Moreover, Respondents detain noncitizens in prison-like conditions that severely hamper their ability to obtain legal assistance, gather evidence, and prepare for a bond hearing.

99. Third, placing the burden on the government imposes minimal cost or inconvenience, as the government has access to the noncitizen's immigration records and other information that it can use to make its case for continued detention.

100. In light of these considerations, "[t]he overwhelming majority of courts to consider the question . . . have concluded that imposing a clear and convincing standard would be most consistent with due process." *Martinez v. Decker*, No. 18-CV-6527 (JMF), 2018 WL 5023946, at *5 (S.D.N.Y. Oct. 17, 2018) (internal quotation marks omitted). Courts in this

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district regularly impose this requirement. *See Banda*, 385 F. Supp. 3d 1120–21 (requiring clear and convincing evidence); *Djelassi*, 434 F. Supp. 3d at 929 (same); *Diaz Reyes*, 2020 WL 6820903, at *9 (same).

101. Due process also requires that a neutral decisionmaker consider available alternatives to detention. A primary purpose of immigration detention is to ensure a noncitizen's appearance during removal proceedings. Detention is not reasonably related to this purpose if there are alternative conditions of release that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). ICE's alternatives to detention program—the Intensive Supervision Appearance Program (ISAP)—has achieved compliance rates close to 100 percent. *See Hernandez*, 872 F.3d at 991 (observing that ISAP "resulted in a 99% attendance rate at all EOIR hearings and a 95% attendance rate at final hearings"). It follows that alternatives to detention must be considered in determining whether prolonged incarceration is warranted.

102. Due process likewise requires consideration of a noncitizen's ability to pay a bond. "Detention of an indigent 'for inability to post money bail' is impermissible if the individual's 'appearance at trial could reasonably be assured by one of the alternate forms of release.'" *Id.* at 990 (quoting *Pugh v. Rainwater*, 572 F.2d 1053, 1058 (5th Cir. 1978) (en banc)). As a result, in determining the appropriate conditions of release for immigration detainees, due process requires "consideration of financial circumstances and alternative conditions of release" to prevent against detention based on poverty. *Id*.

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CLAIM FOR RELIEF
28 U.S.C. § 2241
Violation of Fifth Amendment Right to Due Process

103. Mr. Parada alleges and incorporates by reference the paragraphs above.

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

105. Mr. Parada's detention—which has now lasted a year—constitutes prolonged detention and is not reasonably related to a legitimate government purpose.

106. To justify Mr. Parada's ongoing prolonged detention, due process requires an individualized hearing before a neutral decisionmaker where the government must establish that continued detention is justified by clear and convincing evidence of flight risk or danger and that no alternatives to detention could sufficiently mitigate any risk that does exist.

107. For these reasons, Mr. Parada's ongoing detention violates the Due Process Clause of the Fifth Amendment.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Issue a Writ of Habeas Corpus and order Mr. Parada's release unless Respondents hold a custody hearing before an immigration judge within 14 days. At that hearing, the government must establish by clear and convincing evidence that Mr. Parada presents a risk of flight or danger and that no alternative to detention can mitigate any risk that his release would present. The Court should further order that if the government cannot meet its burden, the immigration judge must order

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Mr. Parada's release on appropriate conditions of supervision, taking into account his ability to pay a bond;

c. Alternatively, issue a Writ of Habeas Corpus and hold a hearing before this Court if warranted; determine that Mr. Parada's detention is not justified because the government has not established by clear and convincing evidence that Mr. Parada presents a risk of flight or danger in light of available alternatives to detention; and order Mr. Parada's release, with appropriate conditions of supervision if necessary, taking into account his ability to pay a bond;

d. Issue a declaration that, as applied in this case, 8 U.S.C. § 1226(c) and Petitioner's prolonged detention under that statute violate the Due Process Clause of the Fifth Amendment;

e. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and

f. Grant any other and further relief that this Court deems just and proper.

Dated this 7th day of October 2024.

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