UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

E[redacted] D[redacted] R[redacted],

Petitioner,

v.

CHAD WOLF, Acting Secretary of the Department of Homeland Security; the DEPARTMENT OF HOMELAND SECURITY; ELIZABETH GODFREY, Acting Field Office Director of Enforcement and Removal Operations, Seattle District Office, Immigration and Customs Enforcement; STEVEN LANGFORD, the Geo Group Inc., Warden of Northwest ICE Processing Center,

Respondents.

Case No. 2:20-cv-377

Agency No. A 200-812-012

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

INTRODUCTION

Petitioner [redacted] (Ms. [redacted]) is a citizen of El Salvador who Respondents have detained at the Northwest Detention Center (AKA, Northwest ICE Processing Center) for over a year and a half. Her detention has thus become prolonged and is no longer reasonably related to its statutory purpose. Because she likely faces many additional months or even years in detention, she seeks relief from this Court that would allow her to challenge her continuing, lengthy, and unconstitutional detention.

From approximately 1997 to 2001, Ms. [redacted] was the victim of a severe form of human trafficking in the United States at the hands of her intimate partner. During the course of her trafficking, Ms. [redacted]'s partner forced her to participate in her partner's drug trafficking business by inflicting severe physical, sexual, and emotional abuse on her. On August 12, 2011, as a result of this forced participation, Ms. [redacted] was convicted under 8 U.S.C § 846, conspiracy to possess with intent to distribute one kilogram or more of heroin, and sentenced to the mandatory minimum 120 months' imprisonment—which the presiding judge in the case deemed "overly harsh." [redacted]

After completing her criminal sentence, Ms. [redacted] was transferred to ICE custody in July 2018. She has been detained at the Northwest Detention Center in Tacoma, Washington since that time. Once in removal proceedings, Ms. [redacted] applied for asylum, withholding of removal, and protection under the Convention Against Torture. Her case is currently being held in abeyance at the Ninth Circuit in order to permit USCIS to adjudicate her pending

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application for a T visa, which is based on the fact that she was a victim of trafficking. The application, which would afford her an opportunity to obtain lawful status in the United States, was filed on March 27, 2019, and remains pending at this time. Given Ms. [redacted]'s continuing detention more than a year and a half after ICE first detained her, and given her pending application for a T visa, she asks this Court to order Respondents to release her or provide her with a bond hearing where the government bears the burden to justify her continuing detention.

JURISDICTION

1. Petitioner [redacted] is in the physical custody of Respondents and Immigration and Customs Enforcement, an agency within the Department of Homeland Security. Ms. [redacted] is detained at the Northwest Detention Center in Tacoma, Washington and is under the direct control of Respondents and their agents.

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

3. 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).

4. 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.

5. 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*, 138 S. Ct. 830, 839-41 (2018)

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(holding that 8 U.S.C. §§ 1226(e) and 1252(b)(9) do not bar review of challenges to prolonged immigration detention).

VENUE

6. 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 Ms. [redacted] currently is in custody.

7. 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.

PARTIES

8. Petitioner [redacted] is a citizen of El Salvador who most recently arrived in the United States on or about May 4, 2010. She has been in the custody of the Department of Homeland Security (DHS) since July 18, 2018. Since that time, she has sought relief from removal in her immigration court case and applied for a T visa from United States Citizenship and Immigration Services.

9. Respondent Chad Wolf is the Acting Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the INA, and oversees ICE, which is responsible for Ms. [redacted]'s detention. Mr. Wolf has ultimate custodial authority over Petitioner and is sued in his official capacity.

10. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention of noncitizens.

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11. Respondent Elizabeth Godfrey is the Acting Director of the Seattle District Office of Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement, Department of Homeland Security. As such, Ms. Godfrey is Petitioner's immediate custodian. She is named in her official capacity.

12. Respondent Steven Langford is, on information and belief, employed by the private corporation Geo Group Inc. as Warden of the Northwest ICE Processing Center, where Petitioner is detained. He is sued in his official capacity.

FACTUAL ALLEGATIONS

Ms. [redacted] Removal Proceedings and T Visa Petition

13. Ms. [redacted] is an El Salvadoran immigrant who first entered the United States on or about 1995, and last entered the United States in 2010.

14. From approximately 1997 to 2001, Ms. [redacted] was trafficked by the abusive father of her children within the United States. Ms. [redacted] was subjected to severe sexual and physical abuse and threats to force her to answer phone calls and arrange deliveries for her trafficker's drug trafficking business.

15. In 2001, Ms. [redacted]'s trafficker fled to Mexico to avoid prosecution and, through threats and coercion, obligated Ms. [redacted] to also move to Mexico with her children. While in Mexico, her trafficker was arrested and extradited to the United States for prosecution. Ms. [redacted] remained in Mexico and raised her three children alone.

16. When Ms. [redacted] became aware her trafficker was to be released from criminal custody and deported to Mexico, she attempted to re-enter the United States out of fear for her life.

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17. On May 4, 2010, Ms. [redacted] was apprehended by Border Patrol officers near Hidalgo, Texas. She was given an Expedited Removal Order and subsequently transferred to U.S. Marshal custody on an outstanding arrest warrant for her forced participation in drug trafficking.

18. During her criminal proceedings, which took place in the U.S. District Court, Northern District of California, Ms. [redacted] was assessed by Domestic Violence Expert Witness Professor Nancy K. D. Lemon. The assessment, which is used to identify women who may be at risk for being killed by their intimate partners, revealed that Ms. [redacted] had acted under duress when she participated in some drug sales and was in "lethal danger from [her trafficker] should she have refused to follow his orders." *See* Ex. A, Mem. of Nancy K.D. Lemon at 15.

19. On August 11, 2011, Ms. [redacted] was convicted of conspiracy to possess with intent to distribute one kilogram or more of heroin, 21 U.S.C. § 846.

20. The presiding judge, Jeffrey S. White, rejected the plea agreement of 135 months and sentenced Ms. [redacted] to 120 months, the mandatory minimum under 21 U.S.C. §§ 963 and 841(b)(1)(A). *See* Ex. B. Joint Notice and Stipulation Regarding Sentencing Hr'g. *see also* Ex. C, Judgment and Sentencing Order. In so ordering, the judge noted: "The Court, after evaluating the plea agreement, advised counsel and the defendant the Court was rejecting the plea agreement on the basis that the Court viewed, in light of the record, it was overly harsh and inappropriate and not in the public interest and rejects the plea agreement." Ex. D, Tr. of Sentencing Proceedings at 2:24-3:3. The judge further noted that, based upon the nature of the case and Ms. [redacted] role, "even the sentence I'm required by Congress to give her is overly harsh." *Id.* at 5:21-22.

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21. [redacted]

22. On July 18, 2018, Ms. [redacted] was transferred to the custody of Immigration and Customs Enforcement (ICE). ICE then detained Ms. [redacted] at the Northwest ICE Processing Center in Tacoma, Washington.

23. DHS scheduled Ms. [redacted] for a for a credible fear interview on July 23, 2018. *See* Ex. F, Tr. of Credible Fear Asylum Pre-Screening Interview Notes. An asylum officer with United States Citizenship and Immigration Services administers a credible fear interview to determine whether there is a "significant possibility" that an individual is eligible for protection under the INA or Convention against Torture. 8 U.S.C. § 1225(b)(i)(B)(V).

24. Following the interview, DHS placed Ms. [redacted] in removal proceedings and referred her case to the immigration judge (IJ) for adjudication of her claim for humanitarian protection.

25. Ms. [redacted] was unable to obtain legal representation and appeared pro se in all of her proceedings before the immigration court.

26. On November 8, 2018, the immigration court held a hearing on Ms. [redacted] s humanitarian protection claim. Despite the significant physical and mental harm Ms. [redacted]

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suffered in her home country in the past, the IJ denied her pro se application for failing to submit sufficient evidence to establish that she would be targeted by her family's persecutors in El Salvador upon return or that her persecutors are affiliated with or acting with the acquiescence of the El Salvadoran government.

27. Ms. [redacted] appealed the IJ's decision denying protection under the Convention Against Torture to the Board of Immigration Appeals (BIA) on December 3, 2018.

28. On March 27, 2019, Ms. [redacted] applied to obtain T nonimmigrant status on the basis of the severe form of human trafficking she suffered within the U.S. from approximately 1997 to 2001.

29. The T visa application is not adjudicated by the immigration court but instead must be filed with USCIS. USCIS provided a receipt notice for the application dated April 4, 2019. Ex. G, T Visa Receipt Notice.

30. T nonimmigrant status is a form of lawful immigration status. Congress created the status to protect nonimmigrant victims and strengthen the ability of law enforcement agencies to prosecute perpetrators of human trafficking. Congress explained when passing the authorizing statute that it hoped to "strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases." Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 1513(a)(2), 114 Stat. 1466, 1533 (2000).

31. Once granted, T status comes with work authorization, 8 U.S.C. § 1101(i)(2) and generally lasts for four years, 8 C.F.R. § 214.11 (p)(1). In the final year, T-status holders may then apply to adjust their status to lawful permanent resident status. 8 U.S.C. § 1255(l).

32. On April 16, 2019, the BIA dismissed Ms. [redacted]'s appeal of the IJ's decision in her immigration case. *See* Ex. H, Decision of BIA.

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33. Ms. [redacted] then filed a Petition for Review and Motion to Stay Removal with the Ninth Circuit Court of Appeals on April 18, 2019. *See* [redacted] v. Barr, No. 19-70955 (9th Cir.). On May 5, 2019, Ms. [redacted] filed a Motion to Hold her Petition for Review in Abeyance in order to afford USCIS an opportunity to first adjudicate her T visa application. Ex. I, Motion to Hold Petition for Review in Abeyance. The Ninth Circuit granted the motion to stay removal and motion to hold the case in abeyance on August 29, 2019. Ex. J, Ninth Circuit Order Granting Motion. The case remains pending before the Ninth Circuit.

34. On May 7, 2019, Ms. [redacted] received a Request for Evidence (RFE) from USCIS in relation to her application for T status. In its request, USCIS acknowledged that "the record shows that you were subjected to trafficking in persons at some point in the past," but noted the agency required further proof that Ms. [redacted] was currently physically present in the United States on account of her trafficking. Ex. K, USCIS Request for Evidence of May 7, 2019, at 2. Ms. [redacted] timely filed a response with further evidence on July 31, 2019.

35. Ms. [redacted] received a second RFE relating to her application for T status on August 26, 2019. In this request, USCIS noted that, in order to assess whether a favorable exercise of discretion was warranted in Ms. [redacted]'s case, the agency required copies of documents relating to her criminal conviction. Specifically, USCIS requested a copy of the arrest report, copies of court documents showing the final disposition of the charge, relevant excerpts of law showing the maximum possible penalty for the charge, and any evidence tending to show why a favorable exercise of discretion was warranted. Once again, Ms. [redacted] timely filed her response to USCIS's request.

36. In complying with this second Request for Evidence, Ms. [redacted] met with Licensed Mental Health Counselor Rachael Behrens on October 23, 2019. Ms. Behrens prepared

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a report noting Ms. [redacted] has severe symptoms of Post-Traumatic Stress Disorder with panic attacks, and Major Depressive Disorder. Ex. L, Psychosocial Evaluation of Rachael Behrens at 1. Significantly, the evaluator found Ms. [redacted] to be at low risk of reoffending in the future. *Id.* at 1, 14.

37. Ms. [redacted]'s application for a T visa remains pending.

Ms. [redacted]'s Detention

38. After ICE took custody of Ms. [redacted], ICE placed her in detention at the Northwest Detention Center.

39. On or about September 2018, the immigration court held a custody redetermination hearing in Ms. [redacted] case. Ms. [redacted] was unrepresented at this hearing.

40. The IJ denied bond despite the fact that Ms. [redacted]'s only criminal conviction arose in the course of her own victimization and had occurred more than a decade prior.

41. On July 16, 2019, Ms. [redacted] submitted a request for humanitarian release to the ICE officer in charge of her case. U.S. Representative Adam Smith submitted a letter in support of Ms. [redacted]'s request for release to ICE, asking for "full consideration" of Ms. [redacted]'s case. *See* Ex. M, Letter of Rep. Adam Smith of Nov. 14, 2019.

42. On November 20, 2019, ICE denied Ms. [redacted]s request for humanitarian release.

43. Ms. [redacted] remains in detention, and has been detained in ICE custody for over 18 months.

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LEGAL FRAMEWORK

44. The Due Process Clause of the Fifth Amendment provides Ms. [redacted] with important protections regarding her 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 v. Davis*, 533 U.S. 678, 690 (2001).

45. The INA envisions three basic forms of detention for noncitizens in removal proceedings. 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).

46. The INA also provides for mandatory detention for noncitizens in expedited removal proceedings, 8 U.S.C. § 1225(b)(1), and detention for noncitizens whose immigration cases are completed, *id.* § 1231(a)(6). *See Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1111-13 (W.D. Wash. 2019) (providing overview of INA's detention authorities).

47. Most recently, in *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018), the Supreme Court held that as a matter of statutory interpretation, 8 U.S.C. § 1226(a) does not require the government to provide a detainee with more than an initial 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 after that initial hearing becomes prolonged.

48. Since the Supreme Court's *Jennings* decision, the Ninth Circuit has expressed "grave doubt" that "any statute that allows for arbitrary prolonged detention without any process

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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).

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

50. In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention: to mitigate the risks of danger to the community and to prevent flight. *Id*.; *Demore*, 538 U.S. 510, 522, 528 (2003). The government may not detain a noncitizen based on any other justification.

51. 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

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"the length of confinement cannot be ignored in deciding whether [a] confinement meets constitutional standards").

52. At a minimum, detention without a bond hearing is unconstitutional when it exceeds six months. *See Demore*, 538 U.S. at 529-30 (upholding only "brief" detentions under 8 U.S.C. § 1226(c) that last "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"); *Zadvydas*, 533 U.S. at 701 ("Congress previously doubted the constitutionality of detention for more than six months.").

53. The recognition that six months constitutes a substantial period of confinement 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).

54. Accordingly, the Ninth Circuit has held that immigration detention becomes prolonged at six months. *See Diouf v. Napolitano*, 634 F.3d 1081, 1091 (9th Cir. 2011).

55. While due process may not require a bond hearing after six months in every case, at a minimum, due process demands a bond hearing after detention has become unreasonably prolonged. *See Diop*, 656 F.3d at 234. Courts that apply a reasonableness test have considered

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three main factors in determining whether prolonged detention is reasonable. First, courts have evaluated whether the noncitizen has raised a "good faith" challenge to removal—that is, the challenge is "legitimately raised" and presents "real issues." *Chavez-Alvarez v. Warden York Cty. Prison*, 783 F.3d 469, 476 (3d Cir. 2015). Second, reasonableness is a "function of the length of the detention," with detention presumptively unreasonable if it lasts six months to a year. *Id*. at 477-78; *accord Sopo*, 825 F.3d at 1217-18. Third, courts consider the likelihood that detention will continue pending future proceedings. *Chavez-Alvarez*, 783 F.3d at 478 (finding detention unreasonable after ninth months of detention, when the parties could "have reasonably predicted that Chavez-Alvarez's appeal would take a substantial amount of time, making his already lengthy detention considerably longer"); *Sopo*, 825 F.3d at 128; *Reid*, 819 F.3d at 500.

56. Due process also requires certain minimal procedures at bond hearings. 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

57. 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 at least by clear and convincing evidence. *See United States v. Salerno*, 481 U.S. 739, 750, 752 (1987) (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)

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(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 Padilla v. Immigration & Customs Enf't*, 379 F. Supp. 3d 1170 (W.D. Wash. 2019) (requiring the government to bear the burden of proof for class members who receive bond hearings after being found to have a credible fear of persecution or torture); *Banda v. McAleenan*, 385 F. Supp. 3d 1120-21 (in case of arriving asylum seeker, government must bear burden of proof to justify continued detention after noncitizen had been detained for more than 18 months).

58. 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 v. Eldridge*, 424 U.S. 319, 335 (1976).

59. First, prolonged incarceration deprives noncitizens of a "profound" liberty interest—one that always requires some form of procedural protections. *Diouf*, 634 F.3d at 1091-92; *see also 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)).

60. 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

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noncitizens in prison-like conditions that severely hamper their ability to obtain legal assistance, gather evidence, and prepare for a bond hearing. *See infra* ¶ 66.

61. 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.

62. 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).

63. 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 extraordinary success in ensuring appearance at removal proceedings, reaching compliance rates close to 100 percent. *See Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017) (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.

64. 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)).

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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*.

65. Evidence about immigration detention and the adjudication of removal cases provide further support for the due process right to a bond hearing in cases of prolonged detention.

66. Immigration detainees face severe hardships while incarcerated. Immigration detainees are held in lock-down facilities, with limited freedom of movement and access to their families: "the circumstances of their detention are similar, so far as we can tell, to those in many prisons and jails." *Jennings*, 138 S. Ct. at 861 (Breyer, J., dissenting); *accord Chavez-Alvarez*, 783 F.3d at 478; *Ngo v. INS*, 192 F.3d 390, 397-98 (3d Cir. 1999); *Sopo*, 825 F.3d at 1218, 1221. "And in some cases[,] the conditions of their confinement are inappropriately poor." *Jennings*, 138 S. Ct. at 861 (Breyer, J., dissenting) (citing Dept. of Homeland Security (DHS), Office of Inspector General (OIG), *DHS OIG Inspection Cites Concerns With Detainee Treatment and Care at ICE Detention Facilities* (2017) (reporting instances of invasive procedures, substandard care, and mistreatment, *e.g.*, indiscriminate strip searches, long waits for medical care and hygiene products, and, in the case of one detainee, a multiday lock down for sharing a cup of coffee with another detainee)).

67. These conditions and obstacles only further underscore the serious due process concerns that prolonged immigration detention pose for noncitizen like Ms. [redacted], and reflect the need for a decision before a neutral decisionmaker regarding continued detention

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CLAIM FOR RELIEF

Violation of Fifth Amendment Right to Due Process (Freedom from Arbitrary Detention)

68. Ms. [redacted] re-alleges and incorporates by reference the paragraphs above.

69. 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.

70. Ms. [redacted]'s detention—which has lasted over a year and a half to date—constitutes prolonged detention and is not reasonably related to a legitimate government purpose.

71. The IJ denied Ms. [redacted]'s request for release despite the fact that Ms. [redacted] has no criminal history other than her drug trafficking offense, which arose in a time period when she was a victim of a severe form of human trafficking.

72. Moreover, DHS has prolonged Ms. [redacted]' detention without providing her an opportunity to test the continuing validity of her detention.

73. To justify Ms. [redacted]'s ongoing prolonged detention, due process requires that the government establish, at an individualized hearing before a neutral decisionmaker, that her detention is justified by clear and convincing evidence of flight risk or danger, as well as whether alternatives to detention could sufficiently mitigate any risk that does exist.

74. For these reasons, Ms. [redacted]'s ongoing detention without a hearing 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; hold a hearing before this Court if warranted; determine that Ms. [redacted]'s detention is not justified because the government has not established by clear and convincing evidence that Ms. [redacted]

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presents a risk of flight or danger in light of available alternatives to detention; and order Ms. [redacted]'s release, with appropriate conditions of supervision if necessary, taking into account her ability to pay a bond;

c. In the alternative, issue a Writ of Habeas Corpus and order Ms. [redacted]'s release within 10 days unless Respondents schedule a hearing before an immigration judge. At that hearing, and in order to continue detention, the government must establish by clear and convincing evidence that Ms. [redacted] presents a risk of flight or danger, even after consideration of alternatives to detention that could mitigate any risk that her release would present. The Court should further order that if the government cannot meet its burden, the immigration judge must order Ms. [redacted]'s release on appropriate conditions of supervision, taking into account her ability to pay a bond;

d. Issue a declaration that Petitioner's ongoing prolonged detention violates 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 9th day of March, 2020.

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