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6 **UNITED STATES DISTRICT COURT**
7 **WESTERN DISTRICT OF WASHINGTON**

8
9 [REDACTED]

10 *Petitioner,*

11 v.

12 Camilla WAMSLEY, et al.,

13 *Respondents.*

Case No. 2:25-cv-1819-TMC

**PETITIONER'S TRAVERSE IN
SUPPORT OF PETITION FOR
WRIT OF HABEAS CORPUS**

INTRODUCTION

Respondents fail to justify the legality of Mr. [REDACTED] detention. First, Respondents' argument that Mr. [REDACTED] must exhaust administrative remedies is meritless because the BIA's recent decision in Mr. [REDACTED] case demonstrates exhaustion is futile here. Second, Mr. [REDACTED] continued detention violates 8 U.S.C. § 1226(c), and Respondents offer no defense of the agency decisions to the contrary. Instead, they insist that a federal district court has no authority to provide relief on a habeas petition for unlawful detention when the agency blatantly disregards controlling caselaw. Third, Mr. [REDACTED] ongoing detention violates substantive and procedural due process, requiring his immediate release or, at minimum, a bond hearing at which the government bears the burden of proving by clear and convincing evidence that he presents a flight risk or danger to the community.

ARGUMENT

I. Mr. [REDACTED] need not exhaust administrative remedies as exhaustion is futile

As Respondents acknowledge, exhaustion is not required. Dkt. 11 at 6. Rather, they ask the Court to apply the three-factor prudential exhaustion test from *Puga v. Chertoff*, 488 F.3d 812 (9th Cir. 2007) to Mr. [REDACTED] challenge, arguing that his pending bond appeal at the Board of Immigration Appeals (BIA or Board) shows the test is not satisfied. *Id.* Respondents also assert that no relief is available because Mr. [REDACTED] must instead wait until the Ninth Circuit adjudicates the pending petition for review, filed on September 26, 2025. *Id.* at 7. These arguments rest upon faulty premises.

First, contrary to Respondents' assertion, agency expertise is not necessary here, because whether Mr. [REDACTED] is subject to mandatory detention is a pure question of law and one of statutory interpretation, an exercise this Court is perfectly suited to conduct. Indeed, this Court

1 has previously rejected Respondents’ exact argument to the contrary, explaining that “[t]he task
2 of resolving [a] question of statutory interpretation belongs to the independent judgment of the
3 courts.” *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239, 1251 (W.D. Wash. 2025) (quoting
4 *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385 (2024)).

5 To support their argument, Respondents rely on a decision from the Northern District of
6 California to assert that the BIA has special expertise to assess whether it is substantially
7 unlikely DHS will prevail on charges of deportability. Dkt. 11 at 6–7 (citing *Francisco Cortez v.*
8 *Nielsen*, No. 19-cv000754-PJH, 2019 WL 1508458 at *3 (N.D. Cal. Apr. 5, 2019)). Mr. [REDACTED]
9 case is distinguishable from *Francisco Cortez*, as there the court found that exhaustion was
10 required because the petitioner failed to “provide[] any reason why the BIA will necessarily
11 resolve that question in an unfavorable manner,” *id.*, and thus could not establish the futility of
12 exhaustion. Respondents claim the same applies here because “the BIA has the authority to
13 correct the alleged errors.” Dkt. 11 at 7. But Respondents ignore the obvious—the BIA’s recent
14 decision denying Mr. [REDACTED] motion to remand, finding him removable, and ordering his
15 removal, despite controlling law to the contrary. That decision unequivocally demonstrates that
16 this is not a situation where “administrative review is likely to allow the agency to correct its
17 own mistakes and to preclude the need for judicial review.” *Puga*, 488 F.3d at 815. Indeed, to the
18 contrary, exhaustion would be a “futile gesture” here. *Hernandez v. Sessions*, 872 F.3d 976, 988
19 (9th Cir. 2017) (citation omitted).

20 Respondents also assert, without explanation, that “relaxation of the exhaustion
21 requirement” here would promote bypassing appeals to the BIA. Dkt. 11. at 7. That ignores the
22 fact that Mr. [REDACTED] pursued an administrative appeal on the merits, but subsequently the Board
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1 issued a final decision and affirmed the removal order. Such decision reflects the likely outcome
2 of Mr. [REDACTED] bond appeal at the Board.

3 Moreover, even in cases where one of the *Puga* factors applies, exceptions exist where
4 “administrative remedies are inadequate or not efficacious, . . . [or] irreparable injury will
5 result” *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation omitted). Mr. [REDACTED]
6 raised such exceptions in his memorandum, and Respondents do not contest that they apply here.
7 Nor could they, as courts regularly excuse exhaustion based on “irreparable injury when an
8 individual has been detained for months without a bond hearing, and where several additional
9 months may pass before the BIA renders a decision on a pending appeal.” *Marroquin Ambriz v.*
10 *Barr*, 420 F. Supp. 3d 953, 962 (N.D. Cal. 2019) (citing *De Paz Sales v. Barr*, No. 19-cv-04148-
11 KAW, 2019 WL 4751894, at *4-5 (N.D. Cal. Sept. 30, 2019); *Lopez Reyes v. Bonnar*, No. 18-
12 cv-07429-SK, 2018 WL 7474861, at *6-7 (N.D. Cal. Dec. 24, 2018); *Cortez v. Sessions*, 318 F.
13 Supp. 3d 1134, 1138-39 (N.D. Cal. 2018); *Lopez Reyes v. Bonnar*, No. 18-cv-07429-SK, 2018
14 WL 7474861, at *6-7 (N.D. Cal. Dec. 24, 2018); *Ortega-Rangel v. Sessions*, 313 F. Supp. 3d
15 993, 1003-04 (N.D. Cal. 2018)). This Court recently noted the same, explaining that “district
16 courts in this circuit have routinely waived prudential exhaustion requirements for noncitizens...
17 facing prolonged detention while awaiting administrative appeals.” *Rodriguez Vazquez*, 779 F.
18 Supp. 3d at 1253–54.

19 For these reasons, the Court should reject Respondents’ argument that prudential
20 exhaustion is required.

21 **II. The District Court Has the Authority to Consider Whether Mr. [REDACTED] is Subject to 8**
22 **U.S.C. § 1226(c).**

23 Contrary to Respondents’ argument, this Court need not wait for the Ninth Circuit’s
24 decision on Mr. [REDACTED] deportability or the BIA’s resolution of the bond appeal to determine

1 whether his detention falls within 8 U.S.C. § 1226(c). *See* Dkt. 11 at 7. In *Matter of Joseph*, the
2 BIA held that a lawful permanent resident is not properly detained under § 1226(c) if the
3 government is “substantially unlikely to establish the charge of deportability.” 22 I. & N. Dec.
4 799, 806 (BIA 1999). Indeed, in *Demore v. Kim*, the Supreme Court relied on the availability of
5 a *Joseph* hearing to uphold the constitutionality of mandatory detention under § 1226(c), noting
6 that a *Joseph* hearing provides a critical safeguard against wrongful mandatory detention pending
7 a merits decision. 538 U.S. 510, 514 n.3 (2003). Accordingly, *Joseph* and *Demore* together
8 support the conclusion that Mr. [REDACTED] must be afforded an avenue to challenge DHS’s present
9 detention authority pending a final decision on removability.

10 The Court need resolve only whether Mr. [REDACTED] is properly included in § 1226(c) custody
11 at present—that is, whether DHS is substantially likely to prevail on the charge of removability,
12 an issue now on review before the Ninth Circuit. To preclude individuals in Mr. [REDACTED] posture
13 from challenging the applicability of § 1226(c) would grant the agency unfettered power,
14 allowing it to keep people detained at its whim simply by asserting that they are deportable for
15 one of the enumerated offenses in § 1226(c), even if based on a clearly erroneous legal
16 determination. That is precisely what occurred here, as the BIA refused to give effect to the state
17 court’s order vacating Mr. [REDACTED] prior conviction and in doing so, disregarded binding
18 precedent.

19 Courts regularly grapple with and make findings as to whether there is statutory authority
20 for the challenged detention. *See, e.g., Rodriguez Vazquez v. Bostock* at 1256-61 (addressing
21 whether certain noncitizens are detained under § 1226(a) or § 1225(b)(2)). This case is no
22 different, as the Court must determine whether Respondents have the authority to detain Mr.
23 [REDACTED] under 8 U.S.C. § 1226(c). The statutory text is clear that Respondents have no such
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1 authority here. As Mr. [REDACTED] outlined in his habeas petition, he no longer stands convicted of
2 offenses triggering mandatory detention under § 1226(c), given the vacatur of his prior
3 convictions by the California Superior Court. Dkt. 1 at ¶¶ 56-58; Dkt. 4 at ¶ 10; Dkt. 4-2.
4 Moreover, while Mr. [REDACTED] entered a new plea to different criminal offenses, these do not trigger
5 removability in his case. Mandatory detention under 8 U.S.C. § 1226(c) applies only if a
6 noncitizen is inadmissible by reason of having committed any offense in 8 U.S.C. § 1182(a)(2)
7 or deportable by reason of having committed any offense in 8 U.S.C. § 1227(a)(2)(A)(ii),
8 (A)(iii), (B), (C), or (D). *See* 8 U.S.C. § 1226(c)(1). Mr. [REDACTED] is neither inadmissible nor
9 removable from the United States. Importantly, Respondents do not assert otherwise in their
10 brief. *See* Dkt. 11 at 4–10. The BIA’s decision affirming Mr. [REDACTED] removal order likewise does
11 not disturb this premise. Dkt. 13-8 at 5 n.2. Because Mr. [REDACTED] is neither inadmissible nor
12 removable from the United States, no statute authorizes Respondents to continue detaining him.
13 rendering Mr. [REDACTED] continued detention unlawful.

14 Respondents make no attempt to clarify how they can continue to detain Mr. [REDACTED] under
15 § 1226(c), relying solely on prudential exhaustion arguments, as discussed *supra*. *See* Dkt. 11 at
16 4–7. To the extent that Respondents rely on the BIA’s decision affirming Mr. [REDACTED] removal
17 order, they also make no attempt to defend the legality of the BIA’s rationale failing to give full
18 faith and credit to the state court order vacating Mr. [REDACTED] conviction under California Penal
19 Code (Cal. Pen. Code) § 1473.7(a)(1), contrary to Ninth Circuit and its own precedent. Notably,
20 the BIA’s order was not even consistent with the IJ’s order in the underlying bond proceedings.
21 There, the IJ—in contrast to the BIA—acknowledged that Mr. [REDACTED] was no longer deportable
22 but erroneously and inexplicably concluded that Mr. [REDACTED] detention falls within 8 U.S.C. §
23 1226(c) because his new convictions would render him inadmissible under 8 U.S.C. §
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1 1182(a)(2)(B). Dkt. 4-8. However, as a lawful permanent resident, the question of Mr. [REDACTED]
 2 removability is governed by 8 U.S.C. § 1227, not 8 U.S.C. § 1182. *See, e.g.*, 8 U.S.C. §
 3 1229a(a)(3), (e)(2)(B). Mr. [REDACTED] is not presently seeking admission to the United States; thus,
 4 the grounds of inadmissibility, 8 U.S.C. § 1182, are inapplicable to him. Accordingly, Mr.
 5 [REDACTED] detention only falls within 8 U.S.C. § 1226(c) if he is deportable.¹ The BIA in contrast,
 6 did not find that Mr. [REDACTED] was inadmissible, but instead that his vacated conviction continued to
 7 make him deportable.

8 Specifically, the BIA’s decision defies the Ninth Circuit’s decision in *Bent v. Garland*,
 9 115 F.4th 934 (9th Cir. 2024). In that case, the Ninth Circuit affirmed that Cal. Pen. Code §
 10 1473.7(a)(1) vacates a conviction to address “substantive or procedural error[s],” and that it is
 11 *not* a statute that simply vacates a conviction solely for immigration purposes. 115 F.4th at 940.
 12 As such, a conviction vacated under Cal. Pen. Code § 1473.7(a)(1) cannot trigger immigration
 13 consequences, such as removal. As the Ninth Circuit explained,

14 We need not dust off our dictionary or delve into the legislative history of §
 15 1473.7(a)(1) to see that the statute provides a vehicle to vacate a conviction to
 16 address a substantive or procedural error that renders a conviction ‘legally
 invalid.’ The plain text does *not* permit a state court to vacate a conviction to
 alleviate any immigration consequences arising from the conviction or sentence.”

17 *Bent v. Garland* at 940. (emphasis in original); *see also Matter of De Jesus-Platon*, 29 I. & N.
 18 Dec. 7, 10-11 (BIA 2025) (noting that this principle is “[c]ontrolling precedent”). Furthermore,
 19 the BIA has long held that the agency cannot look behind a state court order to supplant its own
 20 decision about guilt or innocence. *Matter of Contreras*, 18 I. & N. Dec. 30, 32 (BIA 1981);

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 23 ¹ The Supreme Court explained this point in *Barton v. Barr*, noting the language “inadmissible
 24 by reason of” or “deportable by reason of” in § 1226(c) means that the conviction cited as the
 basis for mandatory detention must be “one of the offenses of removal in the noncitizen’s
 removal proceeding.” 590 U.S. 222, 234 (2020) (emphasis omitted).

1 *Matter of Roberts*, 20 I. & N. Dec. 294, 301 (BIA 1991); *Matter of C-M-M-*, 29 I. & N. Dec. 141,
2 142 (BIA 2025).

3 The records in this case comport with this basic legal principle. The Superior Court order
4 in Mr. [REDACTED] case states that Mr. [REDACTED] guilty plea to Cal. Pen. Code § 211 and corresponding
5 enhancement were “set aside in their entirety on the substantive grounds that they are legally
6 invalid due to prejudicial error. . . within the meaning of Penal Code section 1473.7(a)(1) and
7 resulting in an involuntary plea in violation of the Due Process Clause of the Fifth and
8 Fourteenth Amendments of the United States Constitution.” Dkt. 4-2. Thus, the BIA’s
9 presumption that Mr. [REDACTED] vacatur and subsequent new plea must have been amended for
10 immigration purposes is directly contrary to the California statute, the Superior Court order,
11 Ninth Circuit precedent, its own precedent, and the factual record.

12 The BIA’s decision here employs the exact same rationale as that which the Ninth Circuit
13 rejected in *Bent*. *Bent* reviewed a Board decision holding that the vacated conviction was a
14 “rehabilitative vacatur” designed to “prevent immigration hardships,” and that such vacatur “do
15 not affect a conviction’s validity for immigration purposes.” *Bent* at 939 (citation modified).
16 Here, the Board reasoned the same, asserting that the record “does not sufficiently demonstrate
17 that the vacatur order was not for immigration or rehabilitative purposes.” Dkt. 13-8. This is
18 *exactly what the Ninth Circuit rejected in Bent*. See *Bent* at 941 (“[T]he BIA then stated . . .
19 California Penal Code section 1473.7(a)(1) explicitly allows for vacatur of state convictions
20 solely to alleviate immigration consequences. That is wrong.” (citation modified)).² Accordingly,

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24 ² The BIA’s flagrant disregard for binding Circuit precedent also underscores why Mr. [REDACTED]
satisfies all the exhaustion factors.

1 under this Circuit’s precedent, there is no legal basis for detaining Mr. [REDACTED] under § 1226(c), and
2 Respondents’ continued insistence on detaining him under that statutory authority is unlawful.

3 Given the clear agency error, this Court should not afford any weight to the BIA decision
4 when considering whether Mr. [REDACTED] vacated conviction renders him deportable and subject to
5 mandatory detention for the purposes of § 1226(c). *See Sessions v. Dimaya*, 584 U.S. 148, 154,
6 174–75, (2018) (concluding that Cal. Pen. Code § 459 is not an aggravated felony crime of
7 violence because 18 U.S.C. § 16(b) is unconstitutionally vague); *Medina-Lara v. Holder*, 771
8 F.3d 1106, 1116 (9th Cir. 2014) (finding California’s firearm definition overbroad and therefore
9 not a deportable offense); *see also Loper Bright Enters. v. Raimondo*, 603 U.S. 369 at 385.

10 Instead, the Court should rely on the controlling statutory and precedential authority to conclude
11 that Mr. [REDACTED] is not removable and thus, not subject to mandatory detention under 8 U.S.C. §
12 1226(c) or any other statutory basis for detention. For that reason, the Court should order Mr.
13 [REDACTED] immediate release.

14 **III. Mr. [REDACTED] detention violates substantive due process**

15 Contrary to Respondents’ assertion, Mr. [REDACTED] continued detention also violates his
16 right to substantive due process because it is not reasonably related to a legitimate government
17 interest. Dkt. 11 at 8. Respondents purport to rely on *Bell v. Wolfish*, 441 U.S. 520, 538–39
18 (1979), to support their position. However, as the *Bell* Court noted, “if a restriction or condition
19 is not reasonably related to a legitimate goal—if it is arbitrary or purposeless—a court
20 permissibly may infer that the purpose of the governmental action is punishment that may not
21 constitutionally be inflicted upon detainees *qua* detainees.” *Id.* at 539. In Mr. [REDACTED] case, his
22 continued detention is not reasonably related to a legitimate government purpose and has become
23 punitive.

1 First, Mr. [REDACTED] detention is not reasonably related to a legitimate government purpose
 2 because the twin goals of immigration detention – expedient removal and to safeguard the
 3 community – are not fulfilled by his detention. Respondents cannot remove Mr. [REDACTED] in the
 4 foreseeable future because he is not removable. Under binding Ninth Circuit precedent, Mr. [REDACTED]
 5 is not deportable as charged. He therefore is not likely to be removed at all. While Respondents
 6 characterize Mr. [REDACTED] new convictions as “serious crimes,” Dkt. 11 at 10, they never assert,
 7 nor can they, that those convictions render him deportable. In fact, the BIA relied on the fact that
 8 those convictions do *not* make him deportable as evidence that the conviction was vacated solely
 9 for immigration purposes. Dkt. 13-8 at 3.³

10 As Mr. [REDACTED] detention is not reasonably related to a legitimate purpose, it is punitive.
 11 Respondents attempt to ignore this crucial issue, instead arguing that “[REDACTED] substantive due
 12 process claim is essentially a conditions-of-confinement claim concerning his purported lack of
 13 medical care in ICE detention,” and that “[t]his Court should not consider such a conditions of
 14 confinement claim as part of a 28 U.S.C. § 2241 habeas corpus petition.” Dkt. 11 at 8. As an
 15 initial matter, this misses the point: as described above, detention is punitive because it has no
 16 purpose.

17 In any event, as the cases Respondents themselves cite, conditions of detention is a
 18 relevant factor in determining whether detention is in fact punitive. Dkt. 11 at 8. Notably,
 19 Respondents submit *no* evidence to counter Mr. [REDACTED] account of his medical care, nor do they
 20 contest that account, at any point in their briefing. This concedes that, as Mr. [REDACTED] described in
 21 his petition and memorandum, he has suffered from daily vomiting and bleeding due to his
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23 ³ In addition, Mr. [REDACTED] removal is currently stayed at the Ninth Circuit, where proceedings are
 24 likely to take many months or years to resolve. *See* Mot. For Stay of Removal, [REDACTED] v. *Bondi*,
 No. 25-6070 (9th Circuit Sept. 26, 2025), Dkt 4; Ninth Circuit General Order 6.4(c).

1 Crohn's disease, not been provided with the appropriate medication for the disease, and has not
 2 been provided with the specialized medical care or diet necessary to address these acute, serious
 3 problems, despite repeatedly requesting and seeking such assistance to remedy these issues. *See*
 4 Dkt. 3 at 5–6.⁴ As other courts have recognized, these facts are directly relevant to whether
 5 detention is now punitive, and release is now appropriate. *See Doe v. Becerra*, 732 F. Supp. 3d
 6 1071, 1088 (N.D. Cal. 2024) (“The conditions of confinement also inform whether the duration
 7 of detention has become punitive. Thirty months in an overcrowded dormitory with limited
 8 access to medical care, legal assistance, and communications to the outside world is different, for
 9 constitutional purposes, from the same amount of time spent in more comfortable
 10 accommodations with greater access to services.”).

11 As a backup argument, Respondents assert that should the Court find a substantive due
 12 process violation, Mr. █████ nevertheless fails to prove that immediate release is warranted. Dkt.
 13 11 at 10. Respondents instead suggest this Court could afford injunctive relief that would
 14 ameliorate unconstitutional conditions at the Northwest ICE Processing Center (NWIPC), where
 15 Respondents detain Mr. █████ or that the Court should order a bond hearing before an IJ. *Id.*
 16 (citing *Ortiz v. Barr*, No. 20-cv-497, 2020 WL 13577427, at *7 n.8 (W.D. Wash. April 10,
 17 2020); *Doe v. Bostock*, No. 24-cv-326, 2024 WL 3291033, at *8 (W.D. Wash. March 29, 2024)).
 18 But Respondents do not suggest what, exactly, the Court could order to mitigate the punitive
 19 nature of detention. In fact, the undisputed evidence reflects that Respondents have refused to
 20 provide the necessary medical care to mitigate Mr. █████ serious health conditions while he

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 23 ⁴ For this same reason, Respondents' citation to cases like *Doe v. Bostock*, No. 24-cv-326, 2024
 24 WL 3291033 (W.D. Wash. Mar. 29, 2024), misses the mark. Dkt. 11 at 10. There, unlike here,
 the respondents produced evidence that they addressed the medical conditions at issue. Here,
 Respondents have pointed to no such evidence.

1 remains in detention (and claim providing it is not possible), belying Respondents' suggestion
 2 that anything short of release is appropriate. *See* Dkt. 3 at 5–6; *see also* Dkt 4-4. Moreover, this
 3 ignores Mr. [REDACTED] efforts to improve his own conditions of confinement—efforts that
 4 Respondents repeatedly ignore. Dkt. 4 at ¶¶ 20-27; Dkt. 4-6.

5 Respondents also suggest that a court-ordered bond hearing, rather than immediate
 6 release, is the appropriate remedy. But courts regularly issue writs of habeas corpus releasing
 7 immigrants whose ongoing custody violates the Constitution when the government cannot justify
 8 their civil detention, as required by substantive due process. *See, e.g., Doe*, 732 F. Supp. 3d at
 9 1090; *Jimenez v. Wolf*, No. 19-cv-07996-NC, 2020 WL 1082648, at *4 (N.D. Cal. Mar. 6, 2020)
 10 (ordering petitioner's release on a motion to enforce a habeas order after an IJ denied bond at a
 11 prolonged detention hearing); *Ramos v. Sessions*, 293 F. Supp. 3d 1021, 1038 (N.D. Cal. 2018)
 12 (same); *Sales v. Johnson*, No. 16-cv-01745-EDL, 2017 WL 6855827, at *7 (N.D. Cal. Sept. 20,
 13 2017) (same); *Judulang v. Chertoff*, 562 F. Supp. 2d 1119, 1127 (S.D. Cal. 2008) (same); *Mau v.*
 14 *Chertoff*, 562 F. Supp. 2d 1107, 1118–19 (S.D. Cal. 2008) (same); *see also Ekeh v. Gonzales*,
 15 197 F. App'x 637, 638 (9th Cir. 2006) (ordering supervised release pursuant to *Zadvydas*);
 16 *Nguyen v. Fasano*, 84 F. Supp. 2d 1099, 1113 (S.D. Cal. 2000) (issuing order to show cause why
 17 petitioner should not be released pursuant to *Zadvydas*).

18 Courts in sister circuits have done the same. *See, e.g., Madrane v. Hogan*, 520 F. Supp.
 19 2d 654, 667 (M.D. Pa. 2007) (finding “extended detention” under § 1226(c) violates due process
 20 and granting writ); *Bah v. Cangemi*, 489 F. Supp. 2d 905, 919 (D. Minn. 2007) (same); *Lawson*
 21 *v. Gerlinski*, 332 F. Supp. 2d. 735, 744–45 (M.D. Pa. 2004) (concluding that petitioner's
 22 prolonged immigration detention violated substantive due process and ordering release). Finally,
 23 courts also issue writs of habeas corpus releasing detained noncitizens when conditions of
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1 confinement are so excessive to indicate that detention is punitive when considered in relation to
 2 the purpose of detention. *See, e.g., Doe v. Becerra* at 1083; *Bent v. Barr*, 445 F. Supp. 3d 408,
 3 418, 421 (N.D. Cal. 2020); *Doe v. Barr*, No. 20-cv-02141-LB, 2020 WL 1820667, at *9–10
 4 (N.D. Cal. Apr. 12, 2020); *Ortuño v. Jennings*, No. 20-cv-02064-MMC, 2020 WL 1701724, at
 5 *3–5 (N.D. Cal. Apr. 8, 2020); *Doe v. Barr*, No. 20-cv-02263-RMI, 2020 WL 1984266, at *6–7
 6 (N.D. Cal. Apr. 27, 2020). Thus, this Court should order Mr. [REDACTED] immediate release to
 7 remedy the substantive due process violation.

8 **IV. Mr. [REDACTED] detention does not comport with procedural due process**

9 Finally, even if the Court concludes that Mr. [REDACTED] detention does not violate the
 10 Immigration and Nationality Act, and even if it also concludes it is does not violate substantive
 11 due process, due process requires that Respondents afford Mr. [REDACTED] a hearing before a neutral
 12 decisionmaker where Respondents must justify continuing detention by clear and convincing
 13 evidence. To assess whether person’s detention under § 1226(c) violates procedural due process,
 14 courts in this district examine “(1) the total length of detention to date; (2) the likely duration of
 15 future detention; (3) whether the detention will exceed the time the petitioner spent in prison for
 16 the crime that made him removable; (4) the nature of the crimes the petitioner committed; (5) the
 17 conditions of detention; (6) delays in the removal proceedings caused by the petitioner; (7)
 18 delays in the removal proceedings caused by the government; and (8) the likelihood that the
 19 removal proceedings will result in a final order of removal.” *Martinez v. Clark*, No. C18-1669-
 20 RAJ-MAT, 2019 WL 5968089, at *9 (W.D. Wash. May 23, 2019), *report and recommendation*
 21 *adopted*, No. 18-CV-01669-RAJ, 2019 WL 5962685 (W.D. Wash. Nov. 13, 2019).⁵

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 23 ⁵ Respondents note that they cite to *Martinez* for the multi-factor test for prolonged detention
 24 under 8 U.S.C. § 1226(c), whereas Mr. [REDACTED] cited *Djelassi v. ICE Field Off. Dir.*, 434 F. Supp.

1 In *Martinez*, the district court noted that, “essentially all district courts that have
 2 considered the issue agree that prolonged mandatory detention pending removal proceedings,
 3 without a bond hearing, ‘will—at some point—violate the right to due process.’” *Id.* at *6
 4 (quoting *Sajous v. Decker*, No. 18-2447, 2018 WL 2357266, at *8 (S.D.N.Y. May 23, 2018)). In
 5 employing the multi-factor test, the court further explained that the most important factor is the
 6 length of detention. *Martinez*, C18-1669-RAJ-MAT, 2019 WL 5968089, at *9. And here, that
 7 first factor weighs strongly in Mr. ██████ favor, as Respondents concede, given his eighteen-
 8 month detention. *Id.*; Dkt. 11 at 12.

9 The second factor—the likely duration of Mr. ██████ detention—also weighs in Mr.
 10 ██████ favor. Mr. ██████ recently filed a petition for review with the Ninth Circuit on September
 11 26, 2025, and as reflected in *Martinez*, the process takes “approximately 12-20 months from the
 12 notice of appeal date.” Dkt. 12 at ¶ 23; *Martinez*, C18-1669-RAJ-MAT, 2019 WL 5968089, at
 13 *9.⁶

14 The third and fourth factors, which examine the length of Mr. ██████ sentence and the
 15 nature of his convictions would ordinarily weigh in the government’s favor, but they should not
 16 in this case. *See Martinez*, C18-1669-RAJ-MAT, 2019 WL 5968089, at *9; Dkt. 11 at 12. As an
 17 initial matter, for all the reasons stated above, his offense does not even render him removable.
 18 Moreover, Respondents compare Mr. ██████ sentence, rather than the time he spent in prison, to
 19 his time in ICE custody. Dkt. 11 at 12. Mr. ██████ spent five years and three months in jail and
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21 3d 917, 929 (W.D. Wash. 2020); *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1106 (W.D. Wash.
 22 2019)), which consider detention under 8 U.S.C. § 1225(b). Dkt. 11 at 11 n.2 (citing Dkt. No. 3,
 at 13). The “*Martinez* test” includes two additional factors. Under either test, the factors weigh
 in favor of Mr. ██████

23 ⁶ The current Ninth Circuit Frequently Asked Questions reflect 6-12 months from the notice of
 appeal date until oral argument and three to a year from argument to submission.
 24 <https://www.ca9.uscourts.gov/general/faq/> (last visited October 5, 2025).

1 prison, including three years in fire camp. Dkt. 4 at ¶ 15; Dkt. 4-6 ¶¶ 4-5. While this time
 2 exceeds the eighteen months he has spent in ICE custody, Mr. [REDACTED] used much of it productively
 3 by working in fire camps. *Martinez*, C18-1669-RAJ-MAT, 2019 WL 5968089, at *9.⁷

4 The fifth factor, the conditions of detention at NWIPC, clearly favors Mr. [REDACTED]. In
 5 *Martinez*, neither party submitted evidence about the petitioner's conditions of confinement;
 6 therefore, the court ranked the factor as neutral. *Id.* To the contrary, here, Mr. [REDACTED] provided
 7 substantial evidence of the medical neglect he has suffered at NWIPC. Dkt. 4 at ¶ 20-27; Dkt. 4-
 8 4.

9 The sixth and seventh factors consider the nature of delays caused by the petitioner and
 10 the government. *Martinez*, C18-1669-RAJ-MAT, 2019 WL 5968089, at *10. Contrary to the
 11 Respondents' argument, these factors weigh in favor of Mr. [REDACTED]. Dkt. 11. at 13. "Petitioner is
 12 entitled to raise legitimate defenses to removal . . . and such challenges to his removal cannot
 13 undermine his claim that detention has become unreasonable." *Martinez*, C18-1669-RAJ-MAT,
 14 2019 WL 5968089, at *10 (citing *Liban M.J. v. Sec. of Dep't of Homeland Sec.*, 367 F.Supp.3d
 15 959, 965 (D. Minn. 2019) (internal citation omitted) ("[T]he mere fact that a noncitizen opposes
 16 his removal is insufficient to defeat a finding of unreasonably prolonged detention, especially
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18 ⁷ Mr. [REDACTED] also submits that the Court should afford only minimal weight to these factors in *any*
 19 case. Whether a person should receive due process in the first place is not dependent on their
 20 criminal convictions. Instead, in the bond hearing itself, Respondents can address whether that
 21 history makes a person a flight risk or danger to the community. Supreme Court precedent
 22 strongly supports this point, as the Court's caselaw on whether a person is entitled to due process
 23 does not turn on whether a person was previously convicted of a crime. *See, e.g., Zadvydas v.*
 24 *Davis*, 633 U.S. 678, 684–85, 690–91, 700–01 (2001) (explaining principles of due process that
 apply to immigration detainees regardless of the crimes they commit); *Foucha v. Louisiana*, 504
 U.S. 71, 78–78 (1992) (explaining that person's status as a "convicted felon" still has a "liberty
 interest, not extinguished by . . . confinement as a criminal"); *Jackson v. Indiana*, 406 U.S. 715,
 724 (1972) ("If criminal conviction and imposition of sentence are insufficient to justify less
 procedural and substantive protections against indefinite commitment than that generally
 available to all others, the mere filing of criminal charges surely cannot suffice.").

1 where the Government fails to distinguish between bona fide and frivolous arguments in
2 opposition.”))).

3 Mr. [REDACTED] is a lawful permanent resident who has diligently pursued legitimate defenses
4 to removal in his removal proceedings. He requested two continuances to find counsel at the
5 beginning of his removal proceedings. Dkt. 12. at ¶ 7, 8. Once Mr. [REDACTED] secured counsel, his
6 case was set to an individual calendar hearing. He then appeared at a master calendar hearing
7 with counsel on May 15, 2024, and his first individual hearing was on July 8, 2024. Dkt. 4 at ¶¶
8 7, 8. Likewise, Mr. [REDACTED] timely filed a notice of appeal of the IJ’s order denying deferral of
9 removal under the Convention Against Torture (CAT). *Id.* at ¶ 9; 8 C.F.R. § 1003.38(b). Mr.
10 [REDACTED] also filed his petition for review at the Ninth Circuit the same day the BIA issued its
11 decision. Dkt. 12 at ¶¶ 22, 23.

12 By contrast, the IJ caused undue delay in setting Mr. [REDACTED] hearings. Mr. [REDACTED] first
13 individual calendar hearing was on July 8, 2024. The next hearing was set for August 26, 2024,
14 and the third on October 21, 2024. After that hearing, the IJ set the case for decision on
15 December 16, 2024. Dkt. 4 at ¶¶ 8, 9. Thus, it was the immigration court’s scheduling, not any
16 request from Mr. [REDACTED] that caused his merits hearings to proceed over the course of five
17 months. Moreover, the BIA sat on his motion to remand for months before finally determining
18 that it would simply disregard binding precedent and not give effect to the vacated conviction.
19 Dkt. 13-8. Accordingly, both factors weigh in favor of Mr. [REDACTED] “Continued detention will also
20 appear more unreasonable when the delay in the proceedings was caused by the immigration
21 court or other non-ICE government officials.” *Martinez*, C18-1669-RAJ-MAT, 2019 WL
22 5968089, at *10 (citing *Sajous v. Decker*, 18-cv-2447-AJN, 2018 WL 2357266, at *11).

1 The eighth and final factor considers the likelihood that removal proceedings will result
2 in a final removal order. *Id.* Here, despite the BIA’s decision, this factor weighs in favor of Mr.
3 [REDACTED] As discussed above, the BIA decision flatly contradicts Ninth Circuit precedent and BIA
4 caselaw. As a result, the removal order is likely to be vacated by the Ninth Circuit, where a
5 petition for review is pending.

6 Ultimately, at least six factors weigh in Mr. [REDACTED] favor. Accordingly, the Court should
7 find that Mr. [REDACTED] ongoing detention without a bond hearing violates his procedural due
8 process rights.

9 Finally, the Court should reject Respondent’s argument that the government should not
10 be required to justify detention by clear and convincing evidence. Dkt. 11 at 13. Rather, as
11 reflected in *Martinez*, the case on which Respondents rely, courts in this circuit and in this
12 district have all concluded that the government must bear the burden by clear and convincing
13 evidence. *Martinez*, C18-1669-RAJ-MAT, 2019 WL 5968089, at *11 (citing *Calderon-*
14 *Rodriguez v. Wilcox*, 374 F.Supp.3d 1024 (W.D. Wash. 2019); *see also Cortez v. Sessions*, 318
15 F. Supp. 3d 1134 at 1146-47 (holding that *Singh*’s standards continue to apply to prolonged
16 detention bond hearings post-*Jennings*). Moreover, the Ninth Circuit’s decision in *Singh v.*
17 *Holder* holds *as a constitutional matter* that the Due Process Clause requires the government to
18 justify continued detention by clear and convincing evidence after it has become prolonged. 638
19 F.3d 1196, 1203–05 (9th Cir. 2011), *abrogated on other grounds by Jennings v. Rodriguez*, 583
20 U.S. 281 (2018); *accord Kashem v. Barr*, 941 F.3d 358, 380 (9th Cir. 2019) (noting that *Singh*’s
21 clear and convincing evidence burden is a procedural due process standard that “applies in a
22 range of civil proceedings involving substantial deprivations of liberty”).
23
24

1 The procedural requirements set forth in *Singh*, such that the government bears the
 2 burden once detention is unconstitutionally prolonged, remains good law. Although *Jennings*
 3 abrogated *Singh* in part because the Court held that an implied requirement for bond hearings
 4 could not be read into the statutory text, it left open the question of whether *Singh* otherwise
 5 remains good law where it held the clear and convincing evidence standard applied to the
 6 government. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1202 (9th Cir. 2022). In addition, as
 7 noted, cases like *Kashem* recognize that the burden of proof requirement in *Singh* is a
 8 constitutional holding. *See* 941 F.3d at 380. *Singh*'s constitutional holding therefore continues to
 9 apply in cases like this one that do not rest on a statutorily-implied right to a hearing. As one
 10 court has explained, "[a]bsent controlling authority to the contrary, the reasoning of *Singh* and its
 11 holding remain applicable to § 1226(c) cases, like this one, where there is a substantial liberty
 12 interest at stake." *J.P. v. Garland*, 685 F. Supp. 3d 943, 949 (N.D. Cal. 2023) (alteration in
 13 original) (internal quotation marks omitted) (quoting *Pham v. Becerra*, No. 23-cv-01288-CRB,
 14 2023 WL 2744397, at *7 (N.D. Cal. Mar. 31, 2023)). And in any event, "the [Ninth] Circuit
 15 Court [of Appeals] has signaled that the clear and convincing evidence standard remains good
 16 law for immigration detainees subject to prolonged detention." *Anyanwu v. U.S. Immigr. &*
 17 *Customs Enf't Field Off. Dir.*, No. 2:24-CV-00964-LK-GJL, 2024 WL 4627343, at *8 (W.D.
 18 Wash. Sept. 17, 2024), *R&R adopted*, No. C24-0964 TSZ, 2024 WL 4626381 (W.D. Wash. Oct.
 19 30, 2024); *see also Parada Calderon v. Bostock*, No. 2:24-CV-01619-MJP-GJL, 2025 WL
 20 1047578, at *8 (W.D. Wash. Jan. 17, 2025), *report and recommendation adopted in part,*
 21 *rejected in part*, No. 2:24-CV-01619-MJP-GJL, 2025 WL 879718 (W.D. Wash. Mar. 21, 2025)
 22 (similar).

23 CONCLUSION

1 For the foregoing reasons, this Court should grant Mr. [REDACTED] petition for writ of habeas
2 corpus.
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Respectfully submitted this 9th of October, 2025.

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