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

8
9 Case No. 2:25-cv-1819

10 *Petitioner,*

11 v.

12 Camilla WAMSLEY , et al.,

13 *Respondents.*

**MEMORANDUM OF LAW IN
SUPPORT OF PETITION FOR
WRIT OF HABEAS CORPUS AND
MOTION FOR ORDER TO SHOW
CAUSE AND EXPEDITED
CONSIDERATION**

INTRODUCTION

Petitioner [REDACTED] (Mr. [REDACTED] a lawful permanent resident of the United States, has been held in Immigration and Customs Enforcement (ICE) custody for over eighteen months—including for over six months after he ceased to be removable from the United States. In February 2025, the Superior Court of California vacated the sole criminal conviction that the Department of Homeland Security (DHS) relied on to pursue Mr. [REDACTED] removal from the United States and subject him to mandatory detention during his removal proceedings. Nevertheless, an immigration judge (IJ) recently determined that Mr. [REDACTED] remains subject to mandatory detention, even though there is no basis *whatsoever* to remove him, much less to continue detaining him.

The Immigration and Nationality Act (INA), the Due Process Clause, and binding precedent make plain that Mr. [REDACTED] continued detention is unlawful and compel his immediate release. Expeditious action is also needed because ICE has failed to provide adequate medical care for Mr. [REDACTED] who suffers from Crohn's disease, a chronic illness that results in daily physical symptoms including nausea, vomiting, diarrhea, and fatigue. This lack of treatment is in stark contrast to the medical treatment that Mr. [REDACTED] received during his time in pre-trial and criminal custody, which had led to remission of his Crohn's disease for over five years. Notably, ICE has dismissed his requests for medication and dietary accommodation as unadvisable or unattainable in ICE custody.

Accordingly, Petitioner respectfully requests that this Court immediately issue an order to show cause requiring Respondents to justify his continued detention, resolve this petition on an expedited basis, and grant the writ by declaring his continued detention unlawful and ordering Respondents to release Mr. [REDACTED] from ICE custody.

STATEMENT OF FACTS

I. Mr. ██████ Personal History

Mr. ██████ entered the United States as a lawful permanent resident on October 19, 2012. Decl. of Ilyce Shugall (Shugall Decl.) ¶ 4; Ex. A; Ex. F ¶ 2; Ex. B ¶ 4.¹ Mr. ██████ immigrated via his father, who has since passed away. Ex. F ¶ 2. Except for brief departures, the last of which occurred in 2015, Mr. ██████ has resided in the United States ever since, for nearly thirteen years. Shugall Decl. ¶ 4; Ex. F ¶ 2.

Mr. ██████ has extensive family in the United States. Ex. F ¶ 3. His mother is a lawful permanent resident. *Id.* He has one full biological sister who is a U.S. citizen, as well as five half-siblings who are also U.S. citizens. *Id.*

On January 31, 2020, Mr. ██████ was convicted in the Superior Court of California for the County of Nevada of a violation of Cal. Penal Code § 211. *Id.* ¶ 4. The Superior Court sentenced Mr. ██████ to six years for the conviction and an additional three years for an enhancement under Cal. Penal Code § 12022.5(a). Shugall Decl. ¶ 10; Ex. B; Ex. F ¶ 4. Mr. ██████ served approximately three years of his sentence in three fire camps² located in Emmett, Mariposa, and Humboldt County, California. Ex. F ¶ 5.

Because Mr. ██████ guilty plea was not knowing or voluntary, he sought relief under California's post-conviction relief statute, Cal. Penal Code § 1473.7(a)(1). Ex. B. In February

¹ All exhibits referenced in this memorandum are exhibits to the Declaration of Ilyce Shugall.

² The California Department of Corrections and Rehabilitation (CDCR) Fire Camp program places minimum-security incarcerated individuals in conservation camps, where they assist the California Department of Forestry and Fire Protection and local agencies in wildfire suppression, emergency response, and conservation projects. *See* Conservation (Fire) Camps Program, Cal. Dep't of Corr. & Rehab., <https://www.cdcr.ca.gov/facility-locator/conservation-camps/> (last visited Sept. 18, 2025).

2025, the Superior Court vacated Mr. █████ conviction. *Id.* The Ninth Circuit has recognized that a vacatur under California Penal Code § 1473.7(a)(1) effectively sets a conviction aside for immigration purposes. *See Bent v. Garland*, 115 F.4th 934, 941 (2024). Mr. █████ entered a new plea to a violation of Cal. Penal Code §§ 459 and 25400(a)(3), neither of which make him deportable under 8 U.S.C. § 1227. Shugall Decl. ¶ 11; *see also Sessions v. Dimaya*, 584 U.S. 148, 174–75(2018); *Medina-Lara v. Holder*, 771 F.3d 1106, 1116 (9th Cir. 2014). As a result, Mr. █████ is no longer removable from the United States and will continue to retain his lawful permanent resident status.

II. Mr. █████ Removal and Bond Proceedings

ICE detained Mr. █████ on March 12, 2024, after he completed the sentence for his since-vacated conviction and was paroled from state prison. Shugall Decl. ¶¶ 1, 5. That same day, ICE also issued Mr. █████ a Notice to Appear (NTA) initiating removal proceedings, alleging Mr. █████ since-vacated conviction as the sole basis for deportation and charged him with removability under 8 U.S.C. § 1227(a)(2)(A)(iii). *Id.* Mr. █████ has remained in ICE custody for more than eighteen months.

The IJ sustained the allegation and charge and found Mr. █████ removable as charged. Shugall Decl. ¶ 7; Ex. C. Mr. █████ applied for deferral of removal under the Convention Against Torture (CAT). *Id.*; *see also* 8 C.F.R. § 1208.17. On December 16, 2024, the IJ denied Mr. █████ application for CAT and ordered him removed to Jamaica. Shugall Decl. ¶ 8; Ex. C. On January 8, 2025, Mr. █████ filed a notice of appeal with the Board of Immigration Appeals (BIA). *Id.* That appeal remains pending. *Id.*

On March 4, 2025, after the Superior Court vacated the conviction that formed the basis for his removal proceedings, Mr. █████ filed a motion to remand with the BIA. Shugall Decl. ¶ 11. The motion seeks remand to the IJ for termination of removal proceedings, as Mr. █████ is

1 no longer removable as charged by DHS. Indeed, he is not removable on *any* ground. That
2 motion remains pending before the BIA. *Id.*

3 On July 30, 2025, Mr. [REDACTED] filed a motion for a bond hearing with the Tacoma
4 Immigration Court, raising a challenge under *Matter of Joseph*, 22 I. & N. Dec. 799 (BIA 1999).
5 Shugall Decl. ¶ 12; Ex. C. In *Matter of Joseph*, the BIA held that a noncitizen may contest the
6 government’s claim of mandatory detention under 8 U.S.C. § 1226(c) by demonstrating that the
7 government is “substantially unlikely” to prevail on its charges of removability. 22 I. & N. Dec.
8 799 at 800, 806. In his motion, Mr. [REDACTED] argued that, given the vacatur of his conviction, DHS
9 was “substantially unlikely” to prove its charges of removability in his case and could no longer
10 detain him under 8 U.S.C. § 1226(c). Ex. C. Instead, Mr. [REDACTED] detention is governed by 8
11 U.S.C. § 1226(a). That statutory provision allows the immigration court to consider release on
12 bond for noncitizens in ICE custody.

13 On August 6, 2025, the IJ ruled that he lacked jurisdiction to consider Mr. [REDACTED] release
14 on bond, concluding that Mr. [REDACTED] is detained under 8 U.S.C. § 1226(c) despite the vacatur of
15 his conviction. Ex. G, H. The IJ inexplicably relied on the fact that section 1226(c)(1)(A)
16 authorizes mandatory detention for a noncitizen who “*is inadmissible by reason of* having
17 committed any offense covered in section 1182(a)(2)” even though Mr. [REDACTED] is not subject to the
18 grounds of inadmissibility. Ex. H.

19 On August 13, 2025, Mr. [REDACTED] appealed the IJ’s custody determination to the BIA.
20 Shugall Decl. ¶ 17. The appeal remains pending. *Id.* Administrative appeals of IJ custody
21 decisions last, on average, over six months. *See Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d
22 1239, 1253 (W.D. Wash. 2025).

1 III. Mr. █████ Chronic Medical Condition

2 Over the last year of Mr. █████ detention, he has battled severe symptoms of Crohn's
 3 disease, including nausea, vomiting, diarrhea, and fatigue. Shugall Decl. ¶ 20; Ex. D; Ex. F ¶ 9.
 4 These symptoms are especially difficult to manage in a carceral setting. Despite repeated
 5 requests by Mr. █████ and his counsel for medical attention and appropriate treatment, ICE has
 6 failed to provide him with appropriate medical care or dietary accommodation. Shugall Decl.
 7 ¶ 21; Ex. F ¶ 9.

8 While Mr. █████ was in pre-trial custody, he received treatment at the Sierra Nevada
 9 Hospital, in Nevada County, California. Shugall Decl. ¶ 13; Ex. D. The treatment included
 10 infusion therapy, beginning in approximately December 2018 through approximately March
 11 2019, which successfully managed his symptoms. Shugall Decl. ¶ 13. Mr. █████ was in remission
 12 for the rest of the time that he was in pre-trial and criminal custody, for over five years. *Id.* That
 13 changed shortly after he entered ICE custody. Approximately four to five months into his time in
 14 ICE custody, Mr. █████ experienced a flare-up of his Crohn's disease. Shugall Decl. ¶ 20; Ex. D.
 15 After multiple inquiries by Mr. █████ and his counsel, an ICE deportation officer informed Mr.
 16 █████ counsel that ICE was attempting to expedite a medical appointment for Mr. █████ with a
 17 specialist. Shugall Decl. ¶ 22. In the interim, medical staff at the Golden State Annex (GSA)—
 18 where Mr. █████ was initially detained—put Mr. █████ on Prednisone sporadically, while
 19 acknowledging that it is not the appropriate medication for Crohn's disease. *Id.* ¶ 23. The medical
 20 staff at GSA also administered Prednisone without a taper, which caused additional side effects
 21 for Mr. █████ *Id.* GSA medical staff ordered a special diet on Mr. █████ behalf, but he never
 22 received it. *Id.* One staff person at GSA informed Mr. █████ that there were too many people
 23 detained at GSA for the cafeteria to provide a special diet for one person. *Id.*

1 Mr. [REDACTED] eventually saw a gastrointestinal specialist in early September 2024 and had a
2 colonoscopy in mid-October 2024. *Id.* ¶ 24. The specialist recommended that Mr. [REDACTED] take
3 Humera, an immunosuppressant. *Id.* However, GSA medical staff did not provide the medication
4 to Mr. [REDACTED]. Instead, GSA medical staff told him on various occasions that while treatment for
5 Crohn's disease involves immunosuppressant medication, it was not recommended that Mr.
6 [REDACTED] him take an immunosuppressant while at GSA. *Id.* No reason was given for the
7 recommendation.

8 On September 30, 2024, Mr. [REDACTED] through counsel, filed a release request with ICE due
9 to ICE's failure to provide him with necessary medical care. *Id.* ¶ 25. ICE denied Mr. [REDACTED]
10 request for release on October 18, 2024. *Id.* ICE subsequently transferred Mr. [REDACTED] from the
11 GSA to NWIPC. *Id.* ¶ 26. At NWIPC, Mr. [REDACTED] directly and via counsel continued to seek
12 medical treatment. *Id.* After repeated requests to ICE and NWIPC medical staff by counsel, in
13 which counsel requested that Mr. [REDACTED] receive necessary medical treatment and dietary
14 accommodation, NWIPC scheduled Mr. [REDACTED] to see a specialist. *Id.*

15 On approximately June 8, 2025, before Mr. [REDACTED] could see the specialist for another
16 colonoscopy, ICE transferred Mr. [REDACTED] to the Anchorage Correctional Complex (ACC) in
17 Anchorage, Alaska. *Id.* The transfer occurred for unknown reasons. *Id.* Three weeks later, on
18 June 30, 2025, ICE again transferred Mr. [REDACTED] back to NWIPC. *Id.* Upon Mr. [REDACTED] return to
19 NWIPC, medical staff informed him that he had missed his appointment with the specialist. *Id.*
20 Medical staff further informed Mr. [REDACTED] that they would re-schedule his appointment with a
21 specialist. Mr. [REDACTED] subsequently had a colonoscopy on September 5, 2025. *Id.* As of the date of
22 this filing, Mr. [REDACTED] still has not received specialized medication or dietary accommodation. Mr.
23 [REDACTED] continues presently to battle the physical symptoms of his disease daily, including nausea,
24 vomiting, diarrhea, and fatigue. *Id.* ¶ 27.

ARGUMENT

I. Mr. [REDACTED] is no longer removable from the United States and the INA does not mandate his detention.

Mr. [REDACTED] current detention without any review violates the immigration statute and the U.S. Constitution. ICE initially detained Mr. [REDACTED] on the basis that he was subject to removal from the United States, given his California state conviction under Penal Code § 211. Based on this conviction, ICE purported to subject Mr. [REDACTED] to detention under 8 U.S.C. § 1226(c). However, during Mr. [REDACTED] removal proceedings, the Superior Court of California (Superior Court) vacated Mr. [REDACTED] conviction under Penal Code § 211 because Mr. [REDACTED] plea was not knowing or voluntary pursuant to Cal. Penal Code § 1473.7(a)(1) when he initially entered a guilty plea for the offense. *See Bent*, 115 F.4th at 941. Subsequently, Mr. [REDACTED] entered a plea to two offenses which do not trigger removability in his circumstances.

As a lawful permanent resident of the United States, the question of Mr. [REDACTED] removability is governed by 8 U.S.C. § 1227. Mr. [REDACTED] is not presently seeking admission to the United States; thus, the grounds of inadmissibility, 8 U.S.C. § 1182, are inapplicable to him. For this reason, following the Superior Court's vacatur of the conviction that led ICE to initiate removal proceedings in Mr. [REDACTED] case, Mr. [REDACTED] sought to remand his proceedings back to the IJ so that he can seek termination of his removal proceedings, given he is no longer removable from the United States. His motion remains pending.

For the same reason that Mr. [REDACTED] is no longer removable from the United States, Respondents cannot justify his present detention. Mr. [REDACTED] via counsel, requested a bond hearing before the immigration court in July 2025. At the bond hearing, the IJ was required by agency precedent to consider whether ICE was substantially likely to prevail on its charge of removability under *Matter of Joseph*. *See* 22 I. & N. Dec. 799 at 805–06. The IJ failed to address

1 this question and instead concluded that Mr. [REDACTED] detention without review is governed by
2 grounds of inadmissibility at 8 U.S.C. § 1182.

3 The IJ’s finding directly contradicts the plain language of the governing detention statute.
4 The Supreme Court has expressly explained that the language at 8 U.S.C. § 1226(c) means that
5 for a person to be subject to that statute, DHS must have properly charged the conviction that
6 forms the basis for detention. Specifically, the Court has said that the language “inadmissible by
7 reason of” or “deportable by reason of” in § 1226(c) means that the conviction cited as the basis
8 for mandatory detention must be “one of the offenses of removal in the noncitizen’s removal
9 proceeding.” *Barton v. Barr*, 590 U.S. 222, 234 (2020) (emphasis omitted). As the Supreme
10 Court explained in *Barton*, “the statutory text and context of those provisions support that
11 limitation.” *Id.* at 235. As explained above, here Mr. [REDACTED] is no longer subject to removal from
12 the United States. By extension, Respondents cannot detain him, or detain him without review,
13 as the conviction that ICE previously relied on to initiate removal proceedings and detain Mr.
14 [REDACTED] has since been vacated and there are no other charges against Mr. [REDACTED]

15 In sum, ICE has no longer has statutory authority to detain Mr. [REDACTED] under § 1226(c). His
16 continued confinement without review violates the statute and the Constitution, and the Court
17 should order his immediate release.

18 **II. Mr. [REDACTED] detention violates substantive due process**

19 Mr. [REDACTED] detention—now over eighteen months long—is excessively prolonged and
20 punitive, amounting to a substantive due process violation. Substantive due process prohibits
21 civil detention that is punitive in purpose or in effect, including civil detention that is excessively
22 prolonged in relation to its purpose. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972). Put
23 otherwise, “due process requires that the nature and duration of commitment bear some
24 reasonable relation to the purpose for which the individual is committed”; otherwise, the

1 commitment amounts to punishment. *Jones v. Blanas*, 393 F.3d 918, 931 (9th Cir. 2004)
 2 (quoting *Jackson*, 406 U.S. at 738).

3 The Ninth Circuit has held that civil detention violates substantive due process (1) when
 4 it is “expressly intended to punish,” or (2) when “the challenged restrictions serve an alternative,
 5 non-punitive purpose but are nonetheless excessive in relation to the alternative purpose, . . . or
 6 are employed to achieve objectives that could be accomplished in so many alternative and less
 7 harsh methods.” *Jones*, 393 F.3d at 932 (citation modified). These principles apply to civil
 8 immigration detention. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see also Demore*
 9 *v. Kim*, 538 U.S. 510, 522, 528 (2003); *Reid v. Donelan*, 17 F.4th 1, 8 (1st Cir. 2021). Because
 10 the purpose of immigration detention under § 1226(c) is to effectuate expeditious removal and
 11 safeguard the community, immigration detention that does not “bear some reasonable relation”
 12 to that purpose in nature or duration amounts to punishment and violates the Due Process Clause.
 13 *Jones*, 393 F.3d at 931.

14 In Mr. █████ case, neither of these justifications are fulfilled, because he is not subject to
 15 removal from the United States. The Superior Court of California has vacated the sole conviction
 16 on which DHS relied upon to initiate removal proceedings against Mr. █████ Once the BIA
 17 remands Mr. █████ proceedings back to the immigration court, the only resolution of his case is
 18 termination of those proceedings. At present, there is no telling when the BIA will decide Mr.
 19 █████ motion. The IJ nonetheless had authority to exercise jurisdiction over Mr. █████ custody
 20 under *Matter of Joseph*, but instead, erroneously concluded that Mr. █████ custody is governed
 21 by grounds of inadmissibility, which it is not.

22 Moreover, the conditions of Mr. █████ detention are punitive. While immigration
 23 detention is civil in nature, Mr. █████ confinement mirrors prison-like conditions. *See, e.g.,*
 24 *Reyes v. Wolf*, No. C20-0377-JLR-MAT, 2020 WL 6820903, at *3 (W.D. Wash. Aug. 7, 2020)

(citation modified), *R&R adopted as modified*, No. C20-0377JLR, 2020 WL 6820822 (W.D. Wash. Nov. 20, 2020); *Parada Calderon v. Bostock*, No. 2:24-CV-01619-MJP-GJL, 2025 WL 1047578, at *4 (W.D. Wash. Jan. 17, 2025) (similar), *R&R adopted in part, rejected in part*, No. 2:24-CV-01619-MJP-GJL, 2025 WL 879718 (W.D. Wash. Mar. 21, 2025). Most urgently, Mr. [REDACTED] battles a chronic medical condition, Crohn's disease, which has gone untreated during the past year, when he began to experience flare-ups of his condition. Tellingly, Mr. [REDACTED] Crohn's disease was adequately managed by medical staff while he was in pre-trial and criminal custody for over five years. He has now had a relapse while in ICE custody and lives with daily symptoms that include nausea, vomiting, diarrhea and fatigue. Detention facility staff have acknowledged they cannot provide the necessary medication and dietary accommodation. These circumstances undoubtedly render Mr. [REDACTED] detention unconstitutionally punitive. *See King v. Cnty. of Los Angeles*, 885 F.3d 548, 556–57 (9th Cir. 2018) (holding that due process requires civil detention conditions not be same as or worse than criminal custody); *Jones*, 393 F.3d at 934 (same).

Given the substantive due process violation present in Mr. [REDACTED] case, his immediate release is warranted. Courts in this circuit regularly issue writs of habeas corpus releasing immigrants whose ongoing custody violates the Constitution when the government cannot justify their civil detention, particularly where it has been prolonged, as in Mr. [REDACTED] case. *See, e.g., Doe v. Becerra*, 732 F. Supp. 3d 1071, 1090 (N.D. Cal. 2024); *Jimenez v. Wolf*, No. 19-cv-07996-NC, 2020 WL 1082648, at *4 (N.D. Cal. Mar. 6, 2020) (ordering petitioner's release on a motion to enforce a habeas order after an IJ denied bond at a prolonged detention hearing); *Ramos v. Sessions*, 293 F. Supp. 3d 1021, 1038 (N.D. Cal. 2018) (same); *Sales v. Johnson*, No. 16-cv-01745-EDL, 2017 WL 6855827, at *7 (N.D. Cal. Sept. 20, 2017) (same); *Judulang v. Chertoff*, 562 F. Supp. 2d 1119, 1127 (S.D. Cal. 2008) (same); *Mau v. Chertoff*, 562 F. Supp. 2d

1 1107, 1118–19 (S.D. Cal. 2008) (same); *see also Ekeh v. Gonzales*, 197 F. App’x 637, 638 (9th
 2 Cir. 2006) (ordering supervised release pursuant to *Zadvydas*); *Nguyen v. Fasano*, 84 F. Supp. 2d
 3 1099, 1113 (S.D. Cal. 2000) (issuing order to show cause why petitioner should not be released
 4 pursuant to *Zadvydas*).

5 Courts in sister circuits have done the same. *See, e.g., Madrane v. Hogan*, 520 F. Supp.
 6 2d 654, 667 (M.D. Pa. 2007) (finding “extended detention” under § 1226(c) violates due process
 7 and granting writ); *Bah v. Cangemi*, 489 F. Supp. 2d 905, 919 (D. Minn. 2007) (same); *Lawson*
 8 *v. Gerlinski*, 332 F. Supp. 2d 735, 744–45 (M.D. Pa. 2004) (concluding that petitioner’s
 9 prolonged immigration detention violated substantive due process and ordering release). Courts
 10 also issue writs of habeas corpus releasing detained noncitizens when conditions of confinement
 11 are excessive in relation to the person’s flight risk or danger to the community. *See, e.g., Doe v.*
 12 *Becerra*, 732 F. Supp. 3d 1071 at 1089-90; *Bent v. Barr*, 445 F. Supp. 3d 408, 414–15, 421 (N.D.
 13 Cal. 2020); *Doe v. Barr*, No. 20-cv-02141-LB, 2020 WL 1820667, at *8–10 (N.D. Cal. Apr. 12,
 14 2020); *Ortuño v. Jennings*, No. 20-cv-02064-MMC, 2020 WL 1701724, at *3–5 (N.D. Cal. Apr.
 15 8, 2020); *Doe v. Barr*, No. 20-cv-02263-RMI, 2020 WL 1984266, at *6–7 (N.D. Cal. Apr. 27,
 16 2020).

17 In sum, neither the asserted statutory purposes nor the conditions of Mr. [REDACTED]
 18 confinement bear a reasonable relation to lawful civil detention. The Court should thus grant the
 19 habeas petition and order his immediate release.

20 **III. Alternatively, Mr. [REDACTED] detention violates procedural due process.**

21 In the alternative, Mr. [REDACTED] continued, prolonged detention without review violates
 22 procedural due process. The length of his detention combined with the punitive conditions that
 23 Mr. [REDACTED] endures require review by a neutral arbiter. To guard against arbitrary detention and to
 24 guarantee the right to liberty, due process requires “adequate procedural protections” that ensure

1 the government’s asserted justification for a noncitizen’s physical confinement “outweighs the
2 individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533
3 U.S. at 690.

4 Although the Supreme Court has held that “brief” detention during removal proceedings
5 under § 1226(c) does not violate the Constitution, it did not disturb the longstanding principle
6 that otherwise-acceptable civil detention is unconstitutionally punitive once it becomes
7 prolonged. *Demore*, 538 U.S. at 513, 529. In *Demore*, the Supreme Court denied a facial
8 challenge to detention under § 1226(c), which asserted that the statute was unconstitutional
9 because it imposed mandatory detention without a custody hearing. However, the Supreme Court
10 emphasized that such detention was typically “brief” in length and lasted “roughly a month and a
11 half in the vast majority of cases . . . and about five months in the minority of cases in which the
12 [non-citizen] chooses to appeal.” *Id.* at 530.

13 Accordingly, courts continue to consider procedural due process challenges to prolonged
14 immigration detention pursuant to § 1226(c). *See Rodriguez v. Marin*, 909 F.3d 252, 256 (9th
15 Cir. 2018) (registering “grave doubts that any statute that allows for arbitrary prolonged
16 detention without any process is constitutional”); *German Santos v. Warden Pike Cty. Corr.*
17 *Facility*, 965 F.3d 203, 210 (3d Cir. 2020) (holding that “§ 1226(c) is unconstitutional when
18 applied to detain an alien unreasonably long without a bond hearing”). As a result, where the
19 government detains a noncitizen for a prolonged period while the noncitizen pursues a
20 substantial defense to removal, due process requires an individualized hearing before a neutral
21 decisionmaker to determine whether detention remains reasonably related to its purpose.
22 *Demore*, 538 U.S. at 532 (Kennedy, J., concurring) (stating that an “individualized determination
23 as to [a noncitizen’s] risk of flight and dangerousness” may be warranted “if the continued
24 detention became unreasonable or unjustified”); *cf. Jackson*, 406 U.S. at 733 (detention beyond

1 the “initial commitment” requires additional safeguards); *McNeil v. Dir., Patuxent Inst.*, 407 U.S.
 2 245, 249–50 (1972) (noting that “lesser safeguards may be appropriate” for “short-term
 3 confinement”); *Hutto v. Finney*, 437 U.S. 678, 685-86 (1978) (observing, in Eighth Amendment
 4 context, that “the length of confinement cannot be ignored in deciding whether [a] confinement
 5 meets constitutional standards”).

6 As the Ninth Circuit has explained in the pretrial detention context, “[i]t is undisputed
 7 that at some point, [civil] detention can ‘become excessively prolonged, and therefore punitive,’
 8 resulting in a due process violation.” *United States v. Torres*, 995 F.3d 695, 708 (9th Cir. 2021)
 9 (quoting *United States v. Salerno*, 481 U.S. 739, 474 n.4 (1987)). These principles have
 10 “[o]verwhelmingly[] [led the] district courts that have considered the constitutionality of
 11 prolonged mandatory detention—including . . . other judges in this District[] [to] agree that
 12 prolonged mandatory detention pending removal proceedings, without a bond hearing, will—at
 13 some point—violate the right to due process.” *Reyes*, 2020 WL 6820903, at *3; *see also Parada*
 14 *Calderon*, 2025 WL 1047578, at *4. Indeed, “[i]n the context of immigration detention, it is
 15 well-settled that due process requires adequate procedural protections to ensure that the
 16 government’s asserted justification for physical confinement outweighs the individual’s
 17 constitutionally protected interest in avoiding physical restraint.” *Hernandez v. Sessions*, 872
 18 F.3d 976, 990–91 (9th Cir. 2017).

19 Courts assessing whether a detained noncitizen is entitled to a hearing as a matter of due
 20 process typically employ one of two tests: a multi-factor test or the test set out in *Mathews v.*
 21 *Eldridge*, 424 U.S. 319 (1976). Courts in this District generally employ a multi-factor test. *See*
 22 *Djelassi v. ICE Field Off. Dir.*, 434 F. Supp. 3d 917, 929 (W.D. Wash. 2020); *Banda v.*
 23 *McAleenan*, 385 F. Supp. 3d 1099, 1106 (W.D. Wash 2019).

1 Under the multi-factor test, courts consider “(1) the total length of detention to date; (2)
2 the likely duration of future detention; (3) the conditions of detention; (4) delays in the removal
3 proceedings caused by the detainee; (5) delays in the removal proceedings cause[d] by the
4 government; and (6) the likelihood that the removal proceedings will result in a final order of
5 removal.” *Banda*, 385 F. Supp. 3d at 1106 (citation omitted). The length of detention is the
6 “most important factor.” *Id.* at 1118. The *Mathews* test requires balancing (1) the private interest
7 threatened by governmental action; (2) the risk of erroneous deprivation of such interest and the
8 probable value of additional procedural safeguards; and (3) the government interest. *Mathews*,
9 424 U.S. at 335. Mr. [REDACTED] merits a bond hearing under either test.

10 Mr. [REDACTED] circumstances satisfy the multi-factor test. He has been detained for over
11 eighteen months—well beyond six months. His appeal and motion to remand have been fully
12 briefed before the Board since March 4, 2025—nearly six months. There is no telling when his
13 appeals will be decided. As explained above, the conditions of detention he faces are abysmal,
14 due to ICE’s failure to provide adequate medical care and the symptoms he endures daily.
15 Moreover, Mr. [REDACTED] is likely to prevail in his removal proceedings, given that he is a lawful
16 permanent resident who is no longer removable.

17 Moreover, under the *Mathews* balancing test, the private interest threatened by
18 governmental action weighs strongly in Mr. [REDACTED] favor. *See* 424 U.S. at 335. Mr. [REDACTED] “has an
19 overwhelming interest here—regardless of the length of his immigration detention—because any
20 length of detention implicates the same fundamental rights.” *Perera v. Jennings*, No. 21-cv-
21 04136-BLF, 2021 WL 2400981, at *4 (N.D. Cal. June 11, 2021) (citation modified).

22 The risk of erroneous deprivation of liberty is high, as Mr. [REDACTED] has been detained for
23 over eighteen months without a hearing before a neutral arbiter as to whether the government can
24 justify detention under his individualized circumstances. *See Zadvydas*, 533 U.S. at 690 (holding

1 prolonged detention permissible only when detained person poses risk of flight or danger to the
 2 community). Conversely, “the probable value of additional procedural safeguards—an
 3 individualized evaluation of the justification for his detention—is high, because Respondents
 4 have provided virtually no procedural safeguards at all.” *Jimenez*, 2020 WL 510347, at *3
 5 (granting habeas petition for person who had been detained for one year without a bond hearing).

6 Finally, Respondents’ interest in continuing to detain Mr. [REDACTED] without providing any
 7 neutral review of whether detention is justified is weak. *See Mathews*, 424 U.S. at 335. The
 8 specific interest at stake here, where the detention statute does not provide any individualized
 9 review, is not the government’s ability to continue to detain Mr. [REDACTED] but rather the
 10 government’s ability to continue to detain him for an excessive amount of time without any
 11 individualized review. *See Marroquin Ambriz*, 420 F. Supp. 3d 953, 964 (N.D. Cal. Oct. 28,
 12 2019). The cost of providing an individualized inquiry is minimal. The government has
 13 repeatedly conceded this fact. *See Singh v. Barr*, No. 18-cv-2471-GPC-MSB, 2019 WL 4168901,
 14 at *12 (N.D. Cal. Aug. 30, 2019) (“The government has not offered any indication that a second
 15 bond hearing would have outside effects on its coffers.”); *see also Marroquin Ambriz*, 420 F.
 16 Supp. 3d at 964; *Lopez Reyez v. Bonnar*, 362 F. Supp. 3d 762, 777 (N.D. Cal. 2019). In any
 17 event, it is “always in the public interest to prevent the violation of a party’s constitutional
 18 rights.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Sammartano v. First*
 19 *Judicial Dist. Court*, 303 F.3d 959, 974 (9th Cir. 2002)); *see Doe v. Kelly*, 878 F.3d 710, 718
 20 (9th Cir. 2017) (holding that the government “suffers no harm from an injunction that merely
 21 ends unconstitutional practices and/or ensures that constitutional standards are implemented”).

22 Courts regularly afford noncitizens a bond hearing after detention periods similar to, or
 23 even shorter than, Mr. [REDACTED] confinement. *See, e.g., Banda*, 385 F. Supp. 3d at 1118 (noting
 24 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 . . . [for] 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 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 *11 (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 thirteen months favored granting bond hearing); *Cabral v. Decker*, 331 F. Supp. 3d 255, 261 (S.D.N.Y. 2018) (same, for seven months); *Liban M.J. v. Sec’y of DHS*, 367 F. Supp. 3d 959, 963-64 (D. Minn. 2019) (same, for twelve months).

Further, because a custody hearing is warranted as a procedural safeguard against unreasonably prolonged detention in Mr. [REDACTED] case, Respondents must bear the burden of justifying continued confinement by clear and convincing evidence. *See Singh v. Holder*, 638 F.3d 1196, 1205 (9th Cir. 2011); *see also Cooper v. Oklahoma*, 517 U.S. 348, 363 (1996) (holding that “due process places a heightened burden of proof on the State in civil proceedings in which the ‘individual interests at stake . . . are both particularly important and more substantial than mere loss of money’” (quoting *Santosky v. Kramer*, 455 U.S. 745, 756 (1982))); *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) (requiring clear and convincing evidence to justify civil commitment because “[f]reedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause”).

As demonstrated above, Mr. [REDACTED] statutory and substantive due process violations warrant his immediate release. *See supra* Sec. I–II. In the alternative, and at a minimum, the Court should declare that Mr. [REDACTED] prolonged detention violates procedural due process and

1 order Respondents to release Mr. [REDACTED] unless they provide a hearing before an IJ within seven
 2 days where ICE must justify his continued detention by clear and convincing evidence.

3 **IV. Exhaustion of administrative remedies is not required.**

4 The Court should reject any contention that Mr. [REDACTED] is required to await the BIA's
 5 adjudication of his custody appeal before bringing his claims before this Court. While a court
 6 may require exhaustion as a prudential matter for individual habeas claims, such exhaustion is
 7 not warranted here. In the Ninth Circuit, prudential exhaustion is appropriate only where:

8 (1) agency expertise makes agency consideration necessary to
 9 generate a proper record and reach a proper decision;

10 (2) relaxation of the requirement would encourage the deliberate
 11 bypass of the administrative scheme; and

12 (3) administrative review is likely to allow the agency to correct its
 13 own mistakes and to preclude the need for judicial review.

14 *Hernandez*, 872 F.3d at 988 (quoting *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007)). Even
 15 where exhaustion might otherwise apply, exceptions exist where “administrative remedies are
 16 inadequate or not efficacious, . . . [or] irreparable injury will result . . .” *Laing v. Ashcroft*, 370
 17 F.3d 994, 1000 (9th Cir. 2004) (citation omitted). Here, the *Puga* factors weigh squarely against
 18 requiring exhaustion, and even if they did not, exceptions to exhaustion would apply.

19 First, agency expertise is not needed to resolve the issues presented. Mr. [REDACTED] detention
 20 claim turns on the scope of 8 U.S.C. § 1226(c) and whether mandatory detention is permissible
 21 when the predicate conviction has been vacated and a lawful permanent resident ceases to be
 22 deportable. That is a pure question of statutory interpretation and due process, which is the
 23 province of the courts. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385 (2024) (“When
 24 the meaning of a statute [is] at issue, the judicial role [is] to ‘interpret the act of Congress, in
 order to ascertain the rights of the parties.’” (citation omitted)). Furthermore, the agency does not

1 even have the authority to consider Mr. [REDACTED] constitutional claims because such claims are
2 beyond the authority of the agency to adjudicate. *See Morgan v. Gonzales*, 495 F.3d 1084, 1089
3 (9th Cir. 2007) (“The [BIA] has no power to grant relief on . . . substantive due process claims,
4 and accordingly, we have never required petitioners to exhaust claims of this nature before the
5 agency.” (citations omitted)); *see also, e.g., Phan v. Reno*, 56 F. Supp. 2d 1149, 1153 (W.D.
6 Wash. 1996) (declining to impose exhaustion requirement because “[n]o administrative
7 proceeding exists to consider” constitutional challenge to continued detention); *Doe v. Barr*,
8 2020 WL 1820667, at *8 (“[T]he petitioner’s claim of entitlement to a bond hearing is based on
9 the Fifth Amendment . . . and thus exceeds the jurisdiction of the immigration courts and the
10 BIA.”).

11 Second, excusing exhaustion would not encourage the deliberate bypass of administrative
12 procedures. Mr. [REDACTED] has not sidestepped those processes—he has already pursued relief before
13 the immigration court and BIA by requesting a custody determination under *Matter of Joseph*.
14 Furthermore, his motion to remand proceedings to the IJ has been pending for over six months
15 without resolution. The problem is not that he bypassed the administrative process, but that the
16 process has proven incapable of timely resolving his claims while his liberty is at stake. This is
17 precisely the type of case in which federal courts step in to prevent irreparable harm caused by
18 delay. *See, e.g., Rodriguez Vazquez*, 779 F. Supp. 3d 1239 at 1253–54.

19 Third, administrative review is not likely to provide a timely remedy and preclude the
20 need for judicial review. With respect to Mr. [REDACTED] substantive due process claims, the BIA
21 cannot resolve them, as noted above. Although the BIA can review the statutory questions
22 presented, its prolonged inaction demonstrates that administrative review will not timely correct
23 the errors in Mr. [REDACTED] case or obviate the need for judicial review. In these circumstances,
24

1 judicial intervention is not only appropriate but necessary to safeguard Mr. [REDACTED] constitutional
2 rights.

3 Even if prudential exhaustion were otherwise warranted, for similar reasons as outlined
4 above, the exceptions apply here. Critically, Mr. [REDACTED] faces irreparable harm from ongoing
5 detention, and the delay in administrative review only compounds that harm. Both grounds
6 independently warrant excusing exhaustion. *See Laing*, 370 F.3d at 1000.

7 Mr. [REDACTED] unlawful detention constitutes “a loss of liberty that is . . . irreparable.”
8 *Moreno Galvez v. Cuccinelli*, 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020) (*Moreno II*), *aff’d*
9 *in part, vacated in part on other grounds, remanded sub nom. Moreno Galvez v. Jaddou*, 52
10 F.4th 821 (9th Cir. 2022); *cf. Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013)
11 (irreparable harm is met where “preliminary injunction is necessary to ensure that individuals . . .
12 are not needlessly detained” because they are neither a danger nor a flight risk). This is
13 particularly true here, where Mr. [REDACTED] detention also violates the U.S. Constitution. Civil
14 immigration detention violates due process outside of “certain special and narrow nonpunitive
15 circumstances.” *Rodriguez*, 909 F.3d at 257 (citation omitted).

16 Continued detention inflicts substantial irreparable harm on Mr. [REDACTED] for two additional
17 reasons. First, as noted, Mr. [REDACTED] suffers from Crohn’s disease, and ICE has failed to provide
18 adequate medical treatment to manage his symptoms. While in pre-trial and then criminal
19 custody, medical staff treated him adequately, and his disease was in remission for over five
20 years. Approximately four to five months into his time in ICE custody, Mr. [REDACTED] experienced a
21 flare-up of his medical condition. Since it flared up, Mr. [REDACTED] and his counsel have attempted to
22 secure medical treatment, but to no avail. In fact, ICE-contracted staff at detention facilities have
23 informed Mr. [REDACTED] that the medication and dietary accommodation he requires to manage his
24 Crohn’s disease are not possible in ICE detention. *Hernandez*, 872 F.3d at 995 (noting evidence

1 cited by amicus “... of subpar medical and psychiatric care in ICE detention facilities,” in
2 finding plaintiffs had demonstrated irreparable harm). The result is that ICE has left Mr. [REDACTED]
3 Crohn’s disease untreated, causing him extreme physical symptoms, such as nausea, vomiting,
4 diarrhea, and fatigue. He experiences these symptoms daily.

5 Second, Mr. [REDACTED] detention deprives him of the company of his family. Such
6 “separation from family members” constitutes irreparable harm. *Leiva-Perez v. Holder*, 640 F.3d
7 962, 969–70 (9th Cir. 2011) (per curiam) (citation omitted); *see also, e.g., Washington v. Trump*,
8 847 F.3d 1151, 1169 (9th Cir. 2017) (per curiam) (finding “separated families” to be a
9 “substantial injur[y] and even irreparable harm[.]”); *cf. Hernandez*, 872 F.3d at 996 (recognizing
10 that “government-compelled [family] separation” causes family members “trauma” and “other
11 burdens”).

12 Finally, the severe harms are compounded by the well-documented delays in
13 administrative review. EOIR data confirm that custody appeals regularly take over six months to
14 resolve, *see Rodriguez Vazquez*, 779 F. Supp. 3d at 1253, and each day of delay compounds the
15 irreparable harm: Mr. [REDACTED] remains detained even though the statutory and constitutional
16 predicates for that detention have vanished, and he suffers daily deterioration of his health as ICE
17 refuses to provide him with necessary medical care. Courts in this circuit have repeatedly waived
18 exhaustion in similar circumstances, recognizing that prolonged detention during agency delay
19 produces precisely the harm habeas review is designed to prevent. *See Rodriguez Vazquez*, 779
20 F. Supp. 3d at 1253–54; *Cortez v. Sessions*, 318 F. Supp. 3d 1134, 1139 (N.D. Cal. 2018).

21 For all these reasons, prudential exhaustion does not bar this Court from reaching the
22 merits of Mr. [REDACTED] claims.

CONCLUSION

For the foregoing reasons, Mr. [REDACTED] respectfully requests that the Court promptly issue an order to show cause requiring Respondents to justify his detention and an expedited briefing schedule. Upon expedited consideration, the Court should grant Mr. [REDACTED] habeas petition and order Respondents to immediately release him from ICE custody or, in the alternative, to provide him with an individualized bond hearing where the government bears the burden of justifying his continued detention with clear and convincing evidence.

Respectfully submitted this 19th of September, 2025.

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** Application for admission pro hac vice
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