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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

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14 ELUDIO AMADOR SANCHEZ
LOPEZ,
15 Detainee, Murrieta Border
Patrol Station
16 By his next friend;

Case No. 5:19-cv-1004

**VERIFIED PETITION FOR WRIT
OF HABEAS CORPUS**

17 BRANDON ELI SANCHEZ,
18 Petitioner,
19 As next friend of Eludio
Amador Sanchez Lopez

20 v.

21 KEVIN K. MCALEENAN, Acting
Secretary, United States Department of
22 Homeland Security; JOHN P.
SANDERS, Acting Commissioner,
23 United States Customs and Border
Protection; RODNEY S. SCOTT, Chief
24 Border Patrol Agent, San Diego Sector;
WALTER DAVENPORT, Chief
25 Border Patrol Agent, Murrieta Field
Station,

26 Respondents.

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INTRODUCTION

1
2 1. Petitioner is a 19-year-old United States citizen residing in Wildomar,
3 California. He seeks a Writ of Habeas Corpus on behalf of and as next friend to his
4 father, Eludio Amador Sanchez Lopez (“Mr. Sanchez”), because Respondents have
5 held Mr. Sanchez (Petitioner’s father) virtually incommunicado for the last 15
6 days. *See Padilla v. Rumsfeld*, 352 F.3d 695, 703-04 (2d Cir.2003), *rev’d on other*
7 *grounds*, 542 U.S. 426 (2004) (finding inaccessibility for purposes of next friend
8 standing when petitioner being held “incommunicado” and therefore unable to file
9 the petition on his own behalf).

10 2. Mr. Sanchez is a 48-year-old man imprisoned by the federal government
11 under color of the immigration laws. Federal authorities arrested him 15 days ago.
12 Through this petition he seeks immediate release from his incarceration. His
13 continued imprisonment is unlawful because of the confluence of three separate
14 unlawful government practices: First, Respondents have held Mr. Sanchez virtually
15 incommunicado. He was denied all contact with the outside world for the first nine
16 days of his incarceration—including from family and counsel—and since then has
17 been permitted him only one four-minute phone call with his attorney. Second,
18 although Respondents have ostensibly held Mr. Sanchez under color of the
19 immigration laws, they have incarcerated him for two weeks without issuing a
20 charging document and without taking steps to determine whether he is entitled to
21 remain in the United States. Even as of today, they have assigned no deportation
22 officer to his case, and appear nowhere near scheduling him for a bond hearing
23 before an Immigration Judge. Third, they have imprisoned him with no charges in
24 the Border Patrol’s temporary holding facility, a facility not appropriate for
25 overnight stay—let alone for a two-week incarceration.

26 3. Under these unique circumstances, the Constitution requires his immediate
27 release from further imprisonment.
28

1 4. At a minimum, this Court should order Mr. Sanchez's immediate release
2 unless, within 24 hours, Respondents grant him reasonable access to his attorney
3 and family, charge him under the immigration laws and begin processing his case,
4 and move him to a facility appropriate for longer-term confinement.

5 **JURISDICTION AND VENUE**

6 5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241
7 (habeas corpus); 28 U.S.C. § 1651 (All Writs Act); 28 U.S.C. § 1331 (federal-
8 question jurisdiction); Article I, Section 9, Clause 2 of the U.S. Constitution (the
9 Suspension Clause); and Article III of the U.S. Constitution.

10 6. Venue is proper in the Central District of California pursuant to 28 U.S.C.
11 §§ 1391(b)(2) and (e)(1)(B) because a substantial part of the events or omissions
12 giving rise to this claim have transpired here, as Mr. Sanchez is incarcerated here,
13 and because Respondents reside in this judicial district. 28 U.S.C. § 1391(b)(1),
14 (e)(1)(A). Venue is also proper because Respondents are officers or employees of
15 the United States acting in their official capacities. Additionally, venue is proper
16 under the habeas statute because the federal Respondents with custody over Mr.
17 Sanchez reside in this district. *See* 28 U.S.C. § 2243; *Rumsfeld v. Padilla*, 542 U.S.
18 426, 451-52 (2004) (Kennedy, J., concurring).

19 **PARTIES**

20 7. Brandon Eli Sanchez is the son of Mr. Sanchez and seeks a Writ of Habeas
21 Corpus as next friend and on his behalf.

22 8. Eludio Amador Sanchez Lopez (Mr. Sanchez) is currently incarcerated at the
23 Theodore Newton and George Azrak Border Patrol ("BP") Station in Murrieta
24 ("Murrieta BP Station" or "Station"), California by U.S. Customs and Border
25 Protection ("CBP"). He has been imprisoned since May 17, 2019.

26 9. Respondent Kevin K. McAleenan is the Acting Secretary of the Department
27 of Homeland Security. Acting Secretary McAleenan has legal custody of Mr.
28 Sanchez. He is named in his official capacity.

1 10. Respondent John P. Sanders is the Acting Commissioner of CBP. Acting
2 Commissioner Sanders has legal custody of Mr. Sanchez. He is named in his
3 official capacity.

4 11. Respondent Rodney S. Scott is Chief Patrol Agent of the Border Patrol's
5 San Diego Sector, which operates the Murrieta field station. He has legal custody
6 of Mr. Sanchez. He is named in his official capacity.

7 12. Respondent Walter Davenport is the Border Patrol Agent in charge of the
8 Murrieta Field Station. He has legal capacity of Mr. Sanchez. He is named in his
9 official capacity.

10 **FACTS**

11 13. Eludio Amador Sanchez Lopez lives in Wildomar, California with his wife
12 and three children. He works as a mechanic.

13 14. On May 17, 2019, Mr. Sanchez had just finished delivering a car he had
14 been working on in Murrieta when he was pulled over by the Border Patrol. Border
15 Patrol officers then arrested him and took him to the Murrieta BP Station.

16 15. Respondents have kept Mr. Sanchez jailed at the Murrieta BP Station since
17 that date, May 17, 2019.

18 **Conditions at the Murrieta BP Station Are Horrific**

19 16. Respondents have held Mr. Sanchez and others detained at the Murrieta BP
20 Station under horrific conditions.

21 17. The notoriously abysmal conditions of BP stations throughout the country
22 are well-documented in federal litigation and third-party reports. These facilities,
23 termed "hieleras" (Spanish for "freezers") are typically small, concrete rooms with
24 concrete or metal benches.¹ In Customs and Border Protection's own words, these

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26 _____
27 ¹ Cantor, Guillermo, Detained Beyond the Limit: Prolonged Confinement by U.S.
28 Customs and Border Protection Along the Southwest Border, American
Immigration Council, 1, (Aug. 2016)

(cont'd)

1 facilities are “not designed for sleeping”: they have no beds and showers are not
2 guaranteed.² Nevertheless, Border Patrol routinely imprisons individuals in Border
3 Patrol field stations for days or weeks.³ An ACLU review of FOIA documents
4 from 2009-2014 from Border Patrol holding facilities along the Southern border
5 revealed “horrific detention conditions: children held in freezing rooms with no
6 blankets, food, or clean water; forced to sleep on concrete floors or share
7 overcrowded cells with adult strangers; [and] denied necessary medical care.”⁴
8 Many individuals are suffering severe mental distress due to the extreme
9 conditions under which they are detained.

10 18. Courts across the country, including in the Ninth Circuit, have made factual
11 findings about the horrific conditions in Border Patrol holding facilities. For
12 example, the District Court of Arizona in *Doe v. Kelly* granted, and the Ninth
13 Circuit affirmed, a preliminary injunction ordering Border Patrol to address grave
14 deficiencies in the Tucson Sector stations’ holding facilities. 878 F.3d 710, 716

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16 [https://www.americanimmigrationcouncil.org/
17 sites/default/files/research/detained_beyond_the_limit.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/detained_beyond_the_limit.pdf).

18 ² *Id.* at 1 & n.7, 4 & n.18; *see also* Abigail Hauslohner and Maria Sacchetti,
19 “Hundreds of Minors held at U.S. border facilities are there beyond legal time
20 limits.” The Washington Post, May 30, 2019 (quoting one CBP officials describing
21 the agency’s Rio Grande Valley facilities as saying “I have no beds . . . Our
22 facilities are not built for long-term holding[.]”).

23 ³ *See* Abigail Hauslohner and Maria Sacchetti, Hundreds of Minors held at U.S.
24 border facilities are there beyond legal time limits The Washington Post (May 30,
25 2019), [https://www.washingtonpost.com/immigration/hundreds-of-minors-held-at-
26 us-border-facilities-are-there-beyond-legal-time-limits/2019/05/30/381cf6da-8235-
27 11e9-bce7-40b4105f7ca0_story.html?utm_term=.6400c9454d36](https://www.washingtonpost.com/immigration/hundreds-of-minors-held-at-us-border-facilities-are-there-beyond-legal-time-limits/2019/05/30/381cf6da-8235-11e9-bce7-40b4105f7ca0_story.html?utm_term=.6400c9454d36)

28 ⁴ ACLU of San Diego and Imperial Counties et al., Neglect and Abuse of
Unaccompanied Immigrant Children by U.S. Customs and Border Protection, 3,
(May 2018) <https://www.aclusandiego.org/civil-rights-civil-liberties/> (reviewing
FOIA documents describing “horrific detention conditions: children held in
freezing rooms with no blankets, food, or clean water; forced to sleep on concrete
floors or share overcrowded cells with adult strangers; [and] denied necessary
medical care”).

1 (9th Cir. 2017) (detailing unsanitary and unsafe conditions); *see also Flores v.*
2 *Sessions*, No. 85-4544, ECF No. 459-1 (C.D. Cal. July 16, 2018) (July 2018
3 Memorandum of Points and Authorities in Support of Plaintiffs' Motion to Enforce
4 Settlement detailing physical and verbal assault, unsanitary drinking water,
5 inedible food, freezing cell temperatures, and inadequate sleeping conditions in
6 ICE detention centers and Border Patrol stations).

7 **Individuals Held at the Murrieta BP Station Are Denied Contact with the**
8 **Outside World, Including With Counsel**

9 19. Respondents have adopted the categorical position that they can imprison
10 immigrants in temporary holding facilities like the Murrieta BP Station with no
11 contact to the outside world; in their view, they need not provide for either attorney
12 or family visitation at BP stations.

13 20. Over the weekend of May 18-19, 2019 Mr. Sanchez's attorney, Mercedes
14 Castillo, learned that Border Patrol agents had arrested him and were holding him
15 at the Murrieta BP Station when his family asked her to represent him. Ms. Castillo
16 then submitted a form G-28, Notice of Entry as of Appearance as Attorney, to
17 Respondents, thereby formalizing her representation of Mr. Sanchez.

18 21. On Monday, May 20, Ms. Castillo went to the Murrieta BP Station and
19 asked to visit with Mr. Sanchez. BP agents at the Station turned her away, telling
20 her that the Station is a temporary holding facility not equipped for attorney
21 visitation. BP agents also told Ms. Castillo on several occasions that Mr. Sanchez
22 would be transferred to the Adelanto ICE Processing Center or the James A.
23 Musick County Jail (where Ms. Castillo would theoretically be permitted to visit
24 with Mr. Sanchez) within a few days.

25 22. Respondents still have not transferred Mr. Sanchez anywhere. Indeed, when
26 Ms. Castillo contacted the Station on Wednesday, May 29, BP agents told her they
27 may eventually move Mr. Sanchez to the Otay Mesa Detention Center, but only
28 once other immigrants *who have been in BP custody longer* have been transferred.

1 23. On Sunday, May 26, Ms. Castillo was told by a contact at the Guatemalan
2 Consulate that if she called the Station and stated the Consulate had authorized her
3 to call, Ms. Castillo could speak with Mr. Sanchez. Following these instructions,
4 Ms. Castillo was able to speak with Mr. Sanchez for four minutes. Ms. Castillo got
5 the impression from Mr. Sanchez's tone that during the phone call BP officials
6 were hovering over Mr. Sanchez, who was terrified. Ms. Castillo sought to
7 reassure Mr. Sanchez. She could hear howls of despair from detained immigrants
8 in the background.

9 24. Upon information and belief, since at least May 20, Ms. Castillo has called
10 the Station every day to get information about her client and demand to speak with
11 him, to no avail.

12 **Immigrants at the Murrieta BP Station Are Denied Any Opportunity to Seek**
13 **their Release**

14 25. Although ostensibly held under color of immigration law, Mr. Sanchez has
15 not been afforded any of the process available under those laws. No one has issued
16 a Notice to Appear, the charging document that initiates removal proceedings.⁵ He
17 has not been assigned a Deportation Officer. No one has made an initial custody
18 determination—the determination as to whether he must remain in government
19 custody pending a determination on his right to remain in the United States, or
20 instead may be released on recognizance or bond—or afforded him the opportunity
21 to seek review of that determination before an Immigration Judge.

22 26. According to the agents at the Murrieta BP Station, the soonest Mr. Sanchez
23 (and others in his position) will have an opportunity to contest his continued
24 incarceration is upon his transfer to ICE custody.

25 ⁵ There can be no dispute that Petitioner had been in the country for more than
26 fourteen days prior to his apprehension; he therefore could be removed, if at all,
27 only through removal proceedings. *See* 69 Fed. Reg. 48878 (August 11, 2004). To
28 subject Petitioner to removal proceedings, the government would have to prove
that he is not a citizen of the United States.

1 **LEGAL BACKGROUND AND CLAIMS**

2 27. “Freedom from imprisonment—from government custody, detention, or
3 other forms of physical restraint—lies at the heart of the liberty that [the Due
4 Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Mr.
5 Sanchez is entitled to release under the Due Process Clause because Respondents
6 have violated his rights in three related respects.

7 **A. Mr. Sanchez’s Incommunicado Detention Violates the Due Process**
8 **Clause**

9 28. Respondents’ conduct violates the Fifth Amendment’s universal prohibition
10 against holding a prisoner incommunicado. “There is a well established tradition
11 against holding prisoners incommunicado in the United States. It would be hard to
12 find an American who thought people could be picked up by a policeman and held
13 incommunicado, without the opportunity to let anyone know where they were, and
14 without the opportunity for anyone on the outside looking for them to confirm
15 where they were.” *Halvorsen v. Baird*, 146 F.3d 680, 688–89 (9th Cir. 1998). This
16 right applies to civil detainees as well as those in criminal custody. *Id.* (“That a
17 person is committed civilly . . . cannot diminish his right not to be held
18 incommunicado.”).

19 29. This fundamental requirement protects both attorney access as well as
20 prisoners’ right to communicate with family members: “Communication has value
21 even if it would not get a person released. A phone call could reduce the mental
22 distress to the person confined. It could also reduce the anxiety of those who might
23 wonder where he was, such as a spouse, parent, or unsupervised child.” *Id.* at 688.

24 30. Relatedly, Respondents’ actions to effectively bar Mr. Sanchez from
25 communicating with his attorney violate his right to counsel. The right of access to
26 counsel in immigration proceedings is well established under both the Constitution
27 and the Immigration and Nationality Act. U.S. Const., Am. 5; 8 U.S.C. § 1229a;
28 *Colmenar v. INS*, 210 F.3d 967, 971 (9th Cir. 2000). *See also Comm. of Cent. Am.*

1 *Refugees v. INS*, 795 F.2d 1434, 1439 (9th Cir. 1986) (government interference
2 with an “established on-going attorney-client relationship[]” is a “constitutional
3 deprivation”); *Orantes-Hernandez v. Thornburgh*, 919 F.2d 549, 556 (9th Cir.
4 1990) (affirming injunction requiring transfer of immigrants to detention facilities
5 near their attorneys in advance of hearings because of the importance of
6 confidential in-person legal visits to effective assistance of counsel); *Rodriguez-
7 Castillo v. Nielsen*, 18-cv-01317-ODW (C.D. Cal. June 21, 2018) ECF No. 10
8 (temporary restraining order ensuring access to counsel for immigrants imprisoned
9 at FCI Victorville); *Innovation Law Lab (ILL) v. Nielsen*, 342 F. Supp. 3d 1067 (D.
10 Or. 2018) (injunction ensuring access to counsel for immigrants imprisoned at FCI
11 Sheridan).

12 31. Mr. Sanchez also has a statutory right to defend himself in removal
13 proceedings, assuming they are initiated against him, and to petition the
14 government for any benefits he may be entitled to. 8 U.S.C. § 1229a(b)(4).

15 32. Here, Mr. Sanchez was held for nine days completely incommunicado. On
16 the tenth day of his detention, Mr. Sanchez’s attorney, Ms. Castillo was able to
17 have a four-minute conversation with him. Since that four-minute interlude, Mr.
18 Sanchez has again been held incommunicado. He has not been able to speak with
19 his family to ease their (and his) anxiety, and they rightfully fear for his safety
20 given the conditions of his confinement. Had he not been on the phone with his
21 wife immediately prior to his arrest, Mr. Sanchez’s family might well have had no
22 idea where he is.

23 33. Because Mr. Sanchez has been denied all access to the outside world for the
24 vast majority of his incarceration, and because he is currently being held
25 incommunicado, his detention violates the Due Process Clause.

26 34. Similarly, Respondents’ virtual wholesale denial of attorney access
27 interferes with Mr. Sanchez’s established, ongoing attorney-client relationship in
28 violation of his right to Due Process.

1 **B. Mr. Sanchez’s Detention Violates the Due Process Clause Because**
2 **Respondents Have Held Him Without Charge and Unreasonably**
3 **Prolonged His Confinement**

4 35. Mr. Sanchez’s continued incarceration is also unlawful because Respondents
5 have yet to charge Mr. Sanchez, even though he has been in their custody for
6 *fifteen* days. This failure to act contravenes governing immigration laws and
7 regulations, which require immigration officers to proceed against people they
8 arrest “without unnecessary delay.” 8 U.S.C. § 1357(a)(2); 8 C.F.R. § 287.3(d)
9 (requiring that a determination as to continued custody and the issuance of a notice
10 to appear ordinarily be made “within 48 hours” and, under certain exigent
11 circumstances, “within an additional reasonable period of time”).

12 36. Even in terrorism cases, Congress has required the government to charge
13 people held under color of the Patriot Act’s immigration provision in seven days,
14 and mandated release where no charges are brought within that time. 8 U.S.C. §
15 1226a(a)(5).

16 37. Where the government fails to pursue removal proceedings, continued
17 immigration detention loses any connection to its sole legitimate purpose—
18 determining whether the government has a legal basis for deportation. *Demore v.*
19 *Kim*, 538 U.S. 510, 532-33 (2003) (Kennedy, J., concurring). Such unreasonable
20 delay renders further detention excessive, rather than reasonable, in relation to its
21 purpose. *Ly v. Hansen*, 351 F.3d 263, 272 (6th Cir. 2003) (explaining that a
22 noncitizen’s efforts to seek relief “do[] not authorize the [then-]INS to drag its
23 heels indefinitely” and holding that “[t]he entire process . . . is subject to the
24 constitutional requirement of reasonability”); *Nadarajah v. Gonzales*, 443 F.3d
25 1069 (9th Cir. 2006) (holding that “plainly unreasonable” continued detention was
26 unauthorized); *cf. Tijani v. Willis*, 430 F.3d 1241, 1253 n.7 (9th Cir. 2005)
27 (Callahan, J., dissenting) (rejecting limits on immigration detention generally, but
28 noting that unreasonable delay could render otherwise valid detention unlawful).

1 As the government itself stated in recent Supreme Court litigation, unreasonable
2 delay “in pursuing and completing” removal proceedings “may indicate that
3 continued detention is actually for an impermissible collateral purpose (or no
4 purpose at all).” Brief of Petitioners at 48, *Jennings v. Rodriguez*, No. 15-1204
5 (Aug. 26, 2016) (internal quotation marks omitted).

6 38. Respondents have further violated Mr. Sanchez’s rights by prolonging his
7 incarceration without a determination that his detention is necessary to prevent
8 danger or flight, as required by law.

9 39. The Due Process Clause guarantees that all noncitizens must “be free from
10 detention that is arbitrary or capricious.” *Zadvydas*, 533 U.S. at 721 (Kennedy, J.,
11 dissenting); *see also Mathews v. Diaz*, 426 U.S. 67, 77, 87 (1976) (confirming that
12 those “whose presence in this country is unlawful, involuntary, or transitory” have
13 due process rights). In order to comply with the Due Process Clause, detention
14 must therefore be reasonable in relation to its purpose. *Jackson v. Indiana*, 406
15 U.S. 715, 738 (1972). In the immigration context, the basic purposes of detention
16 are to prevent flight and danger while the deportation case is being litigated and, if
17 the government wins, to ensure the detainee appears for removal. *See Zadvydas*,
18 533 U.S. at 699 (explaining the relevant detention statute’s “basic purpose” as “to
19 assure the alien’s presence at the moment of removal”).

20 40. For over fourteen days, the government has taken literally no steps to
21 determine whether Mr. Sanchez is a danger or a flight risk, or whether he is
22 entitled to remain in the United States. The government has not issued Mr. Sanchez
23 a Notice to Appear, assigned a deportation officer to his case, conducted a custody
24 determination to determine if his confinement is necessary, permitted Mr. Sanchez
25 to obtain review of his custody status by an Immigration Judge, or taken any other
26 steps to permit the adjudication of his claimed right to remain in this country. Mr.
27 Sanchez’s continued incarceration violates the Due Process Clause, and release is
28 warranted.

1 **C. Mr. Sanchez’s Incarceration Violates the Due Process Clause**

2 **Because the Conditions of His Imprisonment Constitute Punishment**

3 41. Respondents have imprisoned Mr. Sanchez under punitive conditions of
4 confinement, even though he is not subject to punishment for any crime. This
5 violates the Fifth Amendment. *Wong Wing v. United States*, 163 U.S. 228, 236-38
6 (1896).

7 42. Where the government confines someone under color of its civil (rather than
8 criminal) authority but then holds that person under conditions substantially similar
9 to those for prisoners, courts will presume that the purpose of the incarceration is
10 to punish. *King v. Cnty of Los Angeles*, 885 F.3d 548, 557 (9th Cir. 2018); *Jones v.*
11 *Blanas*, 393 F.3d 918, 931-33 (9th Cir. 2004).

12 43. The conditions under which Respondents have incarcerated Mr. Sanchez
13 leave no doubt that they intend to punish him. Mr. Sanchez has no access to a bed,
14 limited access if any to a shower or other hygiene items, limited access if any to
15 hot food, and no access to medical care. *See supra* pp. 4-5.

16 44. Whereas it was previously the Border Patrol’s position that “a detainee
17 should not be held for more than 12 hours,”⁶ in 2015—with no intervening change
18 in the conditions of its holding centers—the agency “updated” its standards: now,
19 “[d]etainees should generally not be held for longer than 72 hours in CBP hold
20 rooms or holding facilities.” U.S. Customs and Border Protection, “National
21 Standards of Transport, Escort, Detention, and Search (Oct. 2015) (emphasis
22 added).⁷

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25 ⁶ U.S. Border Patrol Chief David Aguilar, U.S. Border Patrol Policy, Subject:
26 Detention Standards, January 31, 2008, 3 at 6.2.1,
27 [https://www.documentcloud.org/documents/818095-bp-policy-on-hold-rooms-and-](https://www.documentcloud.org/documents/818095-bp-policy-on-hold-rooms-and-short-term-custody.html)
[short-term-custody.html](https://www.documentcloud.org/documents/818095-bp-policy-on-hold-rooms-and-short-term-custody.html).

28 ⁷ Available at: [https://www.cbp.gov/sites/default/files/assets/documents/2017-](https://www.cbp.gov/sites/default/files/assets/documents/2017-Sep/CBP%20TEDS%20Policy%20Oct2015.pdf)
[Sep/CBP%20TEDS%20Policy%20Oct2015.pdf](https://www.cbp.gov/sites/default/files/assets/documents/2017-Sep/CBP%20TEDS%20Policy%20Oct2015.pdf).

1 45. CBP is wrong: under the conditions in Murrieta—where those imprisoned
2 are not provided a place to sleep—detention longer than twelve hours violates
3 detainees’ constitutional rights. *See Doe v. Kelly*, 878 F.3d 710, 716 (9th Cir. 2017)
4 (affirming injunction requiring Border Patrol facilities in the Tucson Sector to
5 provide mats and Mylar blankets to immigrants held longer than 12 hours because
6 “a person who has been detained in a station for over 12 hours . . . has a right to lie
7 down and rest.”). Regardless, Mr. Sanchez’s detention far exceeds the legal limit
8 and CBP’s own policy.

9 46. Because the conditions of and motivation for Mr. Sanchez’s incarceration
10 render it punitive, his continued incarceration violates the Due Process Clause.

11 **II. Under the Unique Facts of This Case, the Due Process Clause Requires**
12 **Mr. Sanchez’s Immediate Release**

13 47. The Court should order Mr. Sanchez’s immediate release to remedy the due
14 process violations described above.

15 48. No other court or administrative tribunal can provide Mr. Sanchez any relief.
16 Under ordinary circumstances, Mr. Sanchez could seek relief from the
17 government’s unreasonable delay in pursuing his removal case by filing a motion
18 to terminate in immigration court. *See, e.g., In re Qayyum*, 2004 WL 848576
19 (B.I.A. Feb. 25, 2004) (considering motion to terminate on this basis and finding,
20 on the facts of that case, no unreasonable delay). However, Respondent has no
21 access to the immigration courts because he has not been charged. Even after
22 fifteen days of imprisonment, Mr. Sanchez has yet to be issued a Notice to Appear.

23 49. Respondents have proven themselves fundamentally unable to provide even
24 rudimentarily safe conditions of confinement for Mr. Sanchez at the Murrieta BP
25 Station. Under these dire circumstances, any remedy short of immediate release
26 would be insufficient. Simply put, Mr. Sanchez cannot wait.

27 50. If the Court declines to order Mr. Sanchez’s release, it should, at a minimum
28 order that he be released unless: (1) Respondents immediately allow his attorney,

1 Ms. Castillo, to carry out confidential, in-person attorney client visits, and (2)
2 Respondents, within twenty-four hours, charge Respondent via a Notice to Appear,
3 transfer him to a nearby ICE Processing Center, make a custody determination in
4 his case, and arrange for prompt review of that determination by an Immigration
5 Judge (if the initial determination does not result in his release).

6 **REQUEST FOR RELIEF**

7 51. Petitioner respectfully requests that this Court:

- 8 a. Assume jurisdiction over this matter;
- 9 b. Issue the writ of habeas corpus and order Respondents to show cause,
10 within three days of filing this petition, why the relief Petitioner seeks
11 should not be granted; and set a hearing on this matter within five days of
12 Respondents' return on the order to show cause, pursuant to 28 U.S.C. §
13 2243;
- 14 c. Order Mr. Sanchez's immediate release; or,
- 15 d. In the alternative, order Mr. Sanchez's release unless Respondents 1)
16 immediately permit Mr. Sanchez's attorney to conduct confidential, in-
17 person attorney-client visits with him; and 2) within twenty-four hours,
18 charge Respondent via a Notice to Appear, transfer him to a nearby ICE
19 Processing Center, make a custody determination in his case, and arrange
20 for prompt review of that determination by an Immigration Judge (if the
21 initial determination does not result in his release);
- 22 e. Grant Petitioner attorneys' fees; and
- 23 f. Order any other relief that the Court deems just and equitable.

24
25
26 Dated: May 31, 2019

Respectfully submitted,

/s/ Eva L. Bitran

EVA L. BITRAN

Counsel for Petitioner

VERIFICATION BY PETITIONER PURSUANT TO 28 U.S.C. § 2242

1
2 I am submitting this verification on behalf of Petitioner, my father. He is
3 being held in incommunicado detention and therefore cannot file this petition on
4 his own behalf.

5 I hereby verify that the factual statements made in the attached Petition for
6 Writ of Habeas Corpus are true and correct to the best of my knowledge, and that I
7 could testify to those facts if called upon to do so.

8
9 Dated: May 31, 2019


BRANDON ELI SANCHEZ