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DETAINED

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9 **UNITED STATES DISTRICT COURT**
10 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

11 In the Matter of:)
12)

File No.: 
Case No.: **3:26-cv-2516-BAS-AHG**

13 **Darwin CASTILLO,**)
14)

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

15 Petitioner,)
16)

v.)
17)

17 Warden of the Otay Mesa)
18 Detention Facility, Current or Acting)
19 Field Office Director, San Diego Field)
20 Office, United States Immigration and)
21 Customs Enforcement; Current or)
22 Acting Director, United States)
23 Immigration and Customs)
24 Enforcement; Current or Acting)
25 Secretary, United States Department)
26 of Homeland Security; and Current or)
27 Acting United States Attorney)
28 General,)

Respondents.)
27)
28

PETITIONER'S TRAVERSE

Petitioner Darwin Castillo ("Petitioner") by and through undersigned counsel, respectfully submits this Traverse in support of his Petition for Writ of Habeas Corpus.

I. INTRODUCTION AND FACTUAL BACKGROUND

Petitioner has brought this Petition challenging continued detention under 8 U.S.C. 1226(v). The Government has incorrectly asserted that mandatory detention applies and that due process is satisfied under *Demore v. Kim*. Petitioner seeks an individualized bond hearing.

Petitioner is a Guatemalan asylum seeker detained at Otay Mesa Detention Center in San Diego, California. He fears persecution in Guatemala on account his former involvement in the Guatemalan Army, and as a result of that involvement, received threats from a narcotrafficker. Mr. Castillo has also suffered sexual harassment, child exploitation, and criminal violence, which led him to leave Guatemala.

Mr. Castillo entered the United States on or about December 2012. Petitioner entered without inspection. Respondents commenced removal proceedings against him in immigration court on or around February 15, 2026, entitling him to present his asylum claim with the due process rights under 8 U.S.C. § 1229a. Since then, Petitioner has attended all immigration court hearings.

Petitioner has been diagnosed with [REDACTED]

[REDACTED] The government has filed his medical records with these diagnosis to the Immigration Court. While in detention, these conditions have continued to affect Petitioner's mental and emotional well-being, including heightened anxiety, depression,

1 emotional instability, and trauma-related symptoms. The detention environment
2 has exacerbated these diagnoses by limiting access to consistent treatment,
3 therapeutic support, and stabilizing conditions necessary for effective
4 management of Petitioner's mental health. DHS also provided notice as to
5 petitioner being of the *Franco-Gonzalez* Class Membership.

6 The immigration court has conducted a competency hearing under *Matter*
7 *of M-A-M-* and found that Petitioner is competent, but acknowledged his multiple
8 diagnosis, [REDACTED] and need for
9 daily medication.

11 II. ARGUMENT

12 A. The Government Fails to Establish Eligibility for Mandatory Detention

13 The Government bears the burden of proving statutory applicability.
14 Mandatory detention under § 1226(c) applies only if the Government establishes
15 that Petitioner falls within a qualifying criminal category under 8 U.S.C. §
16 1182(A)(2). Respondents have not met this burden.

17 A categorical approach is required and is not satisfied here. The
18 Government's reliance on *Orellana v. Barr*, 967 F.3d 927 (9th Cir. 2020), is
19 overinclusive and does not eliminate the need for a proper categorical analysis.
20 The Government has not produced conviction records sufficient to establish
21 divisibility or to show that Petitioner was necessarily convicted under a qualifying
22 prong of the statute. Although the Government may rely on *Orellana*, that
23 decision does not relieve the Government of its burden to establish a categorical
24 match on the present record.

25 Further, Petitioner is not properly subject to mandatory detention under 8
26 U.S.C. § 1226(c). That provision applies only when the government takes a
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1 noncitizen into immigration custody “when the alien is released” from criminal
2 custody. Here, however, Petitioner was transferred to ICE custody mid-sentence.
3 Such a mid-sentence transfer is not a qualifying “release” within the meaning of
4 the statute. The reasoning of *Demore v. Kim*, 538 U.S. 510 (2003), presumes that
5 detention follows completion of criminal custody and remains brief; it does not
6 authorize mandatory detention where there has been no true release. Accordingly,
7 Petitioner’s detention is governed by § 1226(a), entitling him to an individualized
8 bond hearing.

9 B. Even if 1226(c) Applies, Detention is Unconstitutional as Applied

10 In *Demore*, the Supreme Court upheld 1226(c) based on the assumption of a
11 short-duration detention, and expeditious removal proceedings. *Demore v. Kim*,
12 538 U.S. 510 (2003). It did not authorize indefinite or prolonged detention without
13 individualized review.
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15 Even where the Court finds that § 1226(c) applies, Petitioner’s continued
16 detention raises serious constitutional concerns. He has been confined for a
17 prolonged period, approximately one year in total custody, including
18 approximately four months in ICE detention, without a definitive end to his
19 removal proceedings. Such detention has become punitive in effect and is
20 functionally indefinite.

21 The Supreme Court has made clear that civil detention must bear a reasonable
22 relation to its purpose and cannot be prolonged without adequate procedural
23 safeguards. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Moreover, even
24 where statutes authorize detention, noncitizens may bring as-applied due process
25 challenges to prolonged confinement. See *Jennings v. Rodriguez*, 583 U.S. 281
26 (2018). Due process therefore requires, at minimum, a case-specific determination
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1 of whether continued detention is justified by flight risk or danger to the
2 community.

3 **III. CONCLUSION**

4 For the above stated reasons, Petitioner respectfully requests that the Court
5 grant this habeas petition.
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8 DATED: 05/6/2026

Respectfully Submitted,

9 //s// David Szeles

10 David Szeles, Esq.

11 Attorney for the Petitioner
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