HANNAH BASALONE
Cal. Bar No. 368332
Federal Defenders of San Diego, Inc.
225 Broadway, Suite 900
San Diego, California 92101-5030
Telephone: (619) 234-8467
Facsimile: (619) 687-2666
Hannah_basalone@fd.org

Attorneys for Mr. De la Torre-Duran

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LUIS MANUEL DE LA TORRE DURAN,

Petitioner,

v.

MARKWAYNE MULLIN, Secretary of the Department of Homeland Security, TODD BLANCHE, Acting Attorney General, TODD M. LYONS, Acting Director, Immigration and Customs Enforcement, JESUS ROCHA, Acting Field Office Director, San Diego Field Office, CHRISTOPHER LAROSE, Warden at Otay Mesa Detention Center,

Respondents.

Civil Case No.: 26-cv-3129-JLS-MSB

Traverse in support of a petition for writ of habeas corpus

INTRODUCTION

Luis Manuel De la Torre-Duran has been detained in immigration proceedings for over seventeen months—over nine of those months since receiving a bond hearing. He is likely to be detained for an additional prolonged period as his case remains pending. Mr. De la Torre-Duran's prolonged detention violates the Due Process Clause. Contrary to the government's claims, nothing prevents this Court from vindicating his due process rights, and many immigrants

in this district have received bond hearings after equivalent time in detention. This Court should therefore order Mr. De la Torre-Duran receive a bond hearing.

ARGUMENT

I. Mr. De la Torre-Duran has been detained in violation of his constitutional rights.

The government argues that Mr. De la Torre-Duran's due process claim based on his nearly ten months in detention is premature. "The Fifth Amendment guarantees that '[n]o person shall be . . . deprived of life, liberty, or property, without due process of law.'" *Salazar*, 2025 WL 3063629, at *3 (quoting U.S. Const. amend. V). "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (9th Cir. 2001).

Although "Ninth Circuit precedent forecloses an inherent due process right to a second or successive bond hearing by virtue of petitioner's continued and prolonged detention[,] [it] does not foreclose on an individualized analysis as to whether such a second bond hearing is necessary to satisfy due process." *Cruz-Olvera v. Henkey*, No. 26-cv- , 2026 WL 658917, *4 (D. Nev. Mar. 6, 2026) (referencing *Rodriguez Diaz v. Garland*, 53 F. 4th 1189, 1209–10 (9th Cir. 2022)).

"Generally, due process protections depend on the situation and must account for (1) the private interest at issue, (2) the risk of erroneous deprivation of that interest through the procedures used, and (3) the Government's interest." *Noori v. LaRose*, No. 25-cv-1824-GPC-MSB, 2025 WL 2800149 (S.D. Cal. Oct. 1, 2025); (citing *Mathews v. Eldridge*, 424 U.S. 319 (1976)); *see also Garcia Domingo*, 806 F. Supp. 3d at 1252. Weighing those considerations here, Respondents have violated the Due Process Clause by indefinitely detaining Mr. De la Torre-Duran.

"First, Petitioner has a private interest in remaining free, which developed over the [years] he resided in the United States." *Noori*, 2025 WL 2800149, at *10. Mr. De la Torre-Duran has been in immigration custody for over nine months since his one and only bond hearing. Even though an immigration judge previously found

him to be a danger and a flight risk, "because [several] months have passed since his last custody redetermination hearing, this factor favors a finding that petitioner's private liberty is implicated by his ongoing detention." *Cruz-Olvera*, 2026 WL 658917, at *5. Mr. De la Torre-Duran is being deprived of the life he built for over 23 years.

Second, courts must consider "the risk of an erroneous deprivation of [Mr. De la Torre-Duran's] interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards." *Mathews*, 424 U.S. at 335. Here, "the Ninth Circuit has looked to whether the detainee has a statutory right to procedural protections . . ." *Jensen v. Garland*, No. 21-cv-1195-CAS-AFM, 2023 WL 3246522, at *6 (C.D. Cal. May 3, 2023). "In evaluating this factor, courts may take into consideration when Petitioner's last bond hearing was held and whether Petitioner has articulated any changed circumstances." *Hernandez v. Bondi*, No 26-cv-2676-JES-DDL, 2026 WL 1471891, *3 (S.D. Cal. May 26, 2026). Mr. De la Torre-Duran is approaching a year since his prior bond hearing. *See* ECF 9-1. During that year, Mr. De la Torre-Duran's 15-year-old son has been without his father, and because Mr. De la Torre-Duran is the primary provider, both his son and wife have been struggling. *See* ECF 9-1 at ¶ 9. This has only been exacerbated as Mr. De la Torre-Duran's detention continues month after month. And though Respondents cite Mr. De la Torre-Duran's prior criminal convictions, *see* ECF 11 at 2, Mr. De la Torre-Duran was providing for his wife, the complainant in one of those cases, prior to his detention. *See* ECF 9-1 at ¶ 9.

Third, "[t]he effort and costs to provide Petitioner with procedural safeguards is minimal." *Garcia Domingo*, 806 F. Supp. 3d at 1252. Because of that minimal cost, "[g]overnmental interests in enforcing immigration laws in general may be substantial, but in the context of whether to provide Petitioner with another bond hearing or not, this interest may be diminished . . . ." *Hernandez*, 2026 WL 1471891, *3. The cost and effort required of the government to provide Mr. De la

Torre-Duran with a bond hearing is minimal.

On balance, all three *Mathews* factors weigh in favor of granting Mr. De la Torre-Duran's petition and ordering a bond hearing.

II. This Court should not require prudential exhaustion to the BIA.

There is no exhaustion provision in 8 U.S.C. § 1226(a). *See Picado v. Hyde*, No. 26-cv-65-JJM-PAS, 2026 WL 352691, *5 (D.R.I. Feb. 9, 2026) (explaining this statutory point). As a result, courts have prudential discretion to decide whether to require exhaustion or not. *Id.*

Courts generally begin their prudential exhaustion analysis as to any agency determination by looking to the *Puga* factors: "1) whether agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision; 2) whether relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and 3) whether administrative review is likely to allow the agency to correct its own mistakes and preclude the need for judicial review." *Miri*, 2026 WL 622302 at *10 (citing *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007)). "Nonetheless, even if the three *Puga* factors weigh in favor of prudential exhaustion, a court may waive the prudential exhaustion requirement if 'administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017) (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)).

None of the three *Puga* factors favor exhaustion. The first *Puga* factor does not favor exhaustion: "the Board of Immigration Appeals is not a 'fact-finding authority' and would only be reviewing 'legal error,' [so] there is no 'further development of the record needed' to resolve the issues." *Miri*, 2026 WL 622302 at *10. "And, in any event, the underlying factual record is straightforward and undisputed." *Gomes v. Hyde*, 804 F. Supp. 3d 265, 273 (D. Mass. 2025). Neither

does the second factor favor exhaustion: whether Respondents violated Mr. De la Torre-Duran's due process rights is "a mixed question of fact and law" that "resolution by this Court can provide guidance for future detainees." *Miri*, 2026 WL 622302 at *11. Neither does the third factor favor exhaustion: While the BIA is theoretically capable of correcting its own mistakes, as courts in this district have observed, "the BIA appears to have largely ceased functioning as a meaningful check on lower-level agency errors, instead upholding 97% of all immigration appeals in 2025, including bond determinations, a rate exceeding the 16-year historical average by at least 30 percentage points." *Tiboko-Tifuh v. Noem*, No. , 2026 WL 1603795, at *3 (S.D. Cal. June 4, 2026) (citing *Perez Velasquez v. Bondi*, No. 26-CV-01759-GPC-DDL, 2026 WL 1042479, *3 n. 2 (S.D. Cal. Apr. 16, 2026). Even if "administrative review is likely to allow the agency to correct its own mistakes," such review would *also* have to "preclude the need for judicial review." *Hernandez*, 872 F. 3d at 988. This would not happen here where the issue is constitutional in nature. And, requiring Mr. De la Torre-Duran to go before BIA would significantly prolong his indefinite detention by many, many months. *Miri*, 2026 WL 622302 at *11.

Regardless, even if *all* of the *Puga* factors favored exhaustion, the apparent futility of an appeal to the BIA, coupled with the prolonged irreparable injury that has already resulted and will continue to result, counsel in favor of not requiring exhaustion in Mr. De la Torre-Duran's case. Indeed, the Ninth Circuit has recognized "the irreparable harms imposed on anyone subject to immigration detention." *Hernandez*, 872 F.3d at 995." For this reason, "district courts in this circuit have routinely waived prudential exhaustion requirements for noncitizens . . . facing prolonged detention while awaiting administrative appeals." *Rodriguez*, 779 F. Supp. 3d at 1253–54 (collecting cases).

Finally, it is worth noting how long a BIA appeal takes, and the deck that is currently stacked against immigrants at the BIA. "According to data released by the

Executive Office for Immigration Review, the average processing time for bond appeals exceeded 200 days in 2024." *Gomes*, 804 F. Supp. 3d at 273 (citing *Rodriguez*, 779 F. Supp. 3d at 1248–49). And that is the case even when the BIA is fully staffed. At present, the BIA has been reduced from 28 members to 15. Current reporting provides "evidence that BIA has been drastically reshaped within the past year, such that the BIA now functions to rubberstamp IJ bond denials." *Perez Velasquez*, 2026 WL 1042479 at *3. As NPR reported in late March 2026, BIA decisions "backed Department of Homeland Security lawyers in 97% of publicly posted cases; that's at least 30 percentage points higher than the average from the last 16 years." Ximena Vustillo & Rahul Mukherjee, *An immigration court few have heard of is quietly shaping policy behind the scenes*, NPR (Mar. 20, 2026).[1]

For the above reasons and the reasons laid out in Mr. De la Torre-Duran's amended petition, he respectfully asks this court to grant his petition and order a bond hearing.

Respectfully submitted,

Dated: June 23, 2026

s/ Hannah Basalone

Hannah Basalone
Federal Defenders of San Diego, Inc.
Attorneys for Mr. De la Torre-Duran
Email: hannah_basalone@fd.org

[1] Available at https://www.npr.org/2026/03/20/nx-s1-5707535/trump-immigration-detention-appeals-board-deportation.