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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Jose Angel GIRON RODAS

Petitioner-Plaintiff,

vs.

Christopher J. LAROSE, in his official
capacity as Warden of Otay Mesa
Detention Center; Patrick DIVVER,
Field Office Director of San Diego
Office of Detention and Removal; Todd
LYONS, in his official capacity as
Acting Director of ICE; Markwayne
MULLIN, in his official capacity as
Secretary of Homeland Security; Daren
K. MARGOLIN as Acting Director of
EOIR, and Todd BLANCHE, in his
capacity as acting U.S. Attorney General

Respondent-Defendants.

Case No.: '26CV3535 JAO JAC

**PETITION FOR WRIT OF
HABEAS CORPUS UNDER 28
U.S.C. § 2241**

Agency File No.:



INTRODUCTION

1. Petitioner, Jose Angel GIRON RODAS, entered the United States without inspection near Douglas, Arizona on July 25, 2003. For over 20 years, Petitioner lived in the United States without incident. He married, found steady work in the construction industry and became an active member of the Church of Jesus Christ and Latter-Day Saints in Los Angeles, California.
2. On March 9, 2017, Petitioner was served with a Notice to Appear. Through counsel he applied for Cancellation of Removal and an employment authorization based on the pending cancellation of removal application. *See* Exhibit M. These proceedings were eventually dismissed by the Immigration Judge (IJ) on August 2, 2023. *See* Exhibit B. Petitioner was able to continue working in the US with work authorization.
3. In May 2024, Petitioner was arrested and charged for transportation of certain aliens under 8 U.S.C. § 1324(a)(1)(A)(ii). Petitioner pled guilty and was sentenced to time served (255 days) with one year of supervised release. *See* Exhibit.C. Petitioner, a Guatemalan national seeking asylum, was transferred to immigration officials on January 10, 2025 and now faces deportation.
4. Petitioner suffers from severe medical conditions including 

 See Exhibit F.

5. At an immigration hearing in June 2025, Petitioner told the judge and Respondents counsel that he bled every day, really suffered without adequate medical care, and felt like he was dying little by little. *See* Exhibit E. As a demonstrative, Petitioner brought a jar of blood that he had lost that day and showed it to those present. *Id.* The immigration judge ruled that he didn't have authority to release him on bond since his conviction for transportation of certain aliens is considered an aggravated felony for which mandatory custody is required under immigration law. *Id.*; *See Exhibit G.* citing INA §§ 236(c) and 101(a)(43)(N) as a motive to deny release at a hearing in March 2025; *see also* 8 U.S.C. §§ 1101(a)(43)(N) and 1226(c).
6. On July 28, 2025, Petitioner Jose Angel Giron Rodas filed a petition for writ of habeas corpus under 28 U.S.C. § 2241. The argument in the habeas was that Petitioner's 5th Amendment Due Process rights were violated because he was not being provided with adequate medical care. The petition was dismissed without prejudice on September 2, 2025. *See* Exhibit H.
7. On March 23, 2026 Petitioner was denied relief (withholding of removal and CAT) at the Otay Mesa Immigration Court. On April 22, 2026 Petitioner submitted an appeal of his denial. The case is currently pending at the BIA. *See* Exhibit J.

1 8. Petitioner has been under Respondents custody for over 16 months and no
2 neutral decisionmaker has conducted a hearing to determine whether this
3 lengthy incarceration is warranted based on danger or flight risk.
4

5 9. Petitioner's prolonged detention without a hearing on danger, and flight risk
6 violates the Due Process Clause of the Fifth Amendment.
7

8 10. Petitioner therefore respectfully requests that this Court 1) Issue a writ of
9 habeas corpus, 2) Enjoin Respondents from transferring Petitioner outside
10 the jurisdiction of the United States District Court for the Southern District
11 of California pending the resolution of this case, 3) Order Respondents to
12 immediately release Petitioner from immigration detention; 4) Alternatively,
13 conduct an immediate bond hearing where DHS bears the burden of
14 justifying Petitioner's continued detention by clear and convincing evidence;
15 5) Award reasonable attorney's fees and costs pursuant to the Equal Access
16 to Justice Act, 5 U.S.C. 504 and 28 U.S.C. 2412; 6) Grant such further relief
17 as the Court deems just and proper.
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21 **STATEMENT OF FACTS**

22
23 11. Petitioner was born in La Gomera, Guatemala and came to the United States
24 in July 25, 2003. Petitioner entered without inspection near Douglas,
25 Arizona and has lived in Los Angeles, California for several decades. *See*
26
27
28

1 Exhibit A.

2 12. In the 23 years he resided in the US, Petitioner has developed strong ties to
3 the community. He has worked in the construction and auto care industry, he
4 married, and he is an active member and respected leader of a Mormon
5 church. *Id.*

6
7
8 13. On March 9, 2017, Petitioner was served with a Notice to Appear. Through
9 counsel he applied for Cancellation of Removal and an employment
10 authorization based on the pending cancellation of removal application. *See*
11 Exhibit M. Petitioner complied with all requirements of the Court. The case
12 was dismissed by the Immigration Judge and Petitioner was allowed to
13 continue to live with his family and work lawfully in the United States. *See*
14 Exhibit B.

15
16
17 14. On May 23, 2024, Petitioner was arrested by CBP agents near a checkpoint
18 in Dulzura, California. At the time of arrest, Petitioner had an undocumented
19 friend in his vehicle. Petitioner was charged with “transportation of certain
20 [non-citizens]” under 8 U.S.C. § 1324(a)(1)(A)(ii). Petitioner plead guilty,
21 was sentenced to time served (233 days), and was to be subject to
22 supervision for 1 year after being released by the US Marshalls. *See* Exhibit
23 C.

1 15. After being released from US Marshall custody, Petitioner was transported
2 to what he believes was Border Patrol custody. Petitioner alleges that Border
3 Patrol agents tried deporting him quickly without seeing an immigration
4 judge. *See* Exhibit A. Respondents gave Petitioner a fake A number (221-
5 350-591) and falsely claimed that Petitioner was a Mexican national. *See*
6 Exhibit K.
7

8
9 16. On January 26, 2025, after 16 days detained at a tent near the US Mexico
10 border and refusing to sign any documents, Petitioner was served a Form I-
11 862 Notice to Appear (NTA) and was transported back to the Otay Mesa
12 Immigration Detention Center. *See* Exhibit D.
13

14 17. Since January 2025, Petitioner has made dozens of requests to OMDC staff
15 for help and submitted dozens of grievances because the treatment he is
16 receiving at Otay Mesa has made his medical condition worse. *See* Exhibit
17 L. Petitioner continues to suffer from rectal bleeding, abdominal pain and
18 cramps daily. *See* Exhibit A. He is in debilitating pain.
19
20

21 18. Petitioner appeared for a Master Calendar Hearing (MCH) on January 30,
22 February 13, and March 26, 2025 without counsel.
23

24 19. Petitioner requested a custody redetermination hearing with an Immigration
25 judge. On March 10, 2025 an IJ at Otay Mesa conducted a hearing and
26 determined that Petitioner was subject to mandatory custody based on INA
27
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1 236(c) and 101(a)(43)(N). The IJ further explained that Petitioner had been
2 convicted of an offense that is an aggravated felony and for which
3 mandatory custody is required. *See* Exhibit G. The IJ did not do an analysis
4 of the *Matter of Guerra* factors to determine if Petitioner was a “danger to
5 the community” or “flight risk”. The denial was based solely on INA 236(c)
6 and 101(a)(43)(N).
7

8
9 20. On April 16, 2025, Rafael Castillo with Consumer Law Group, LLC, filed a
10 notice of entry of Appearance as Attorney.
11

12 21. Through counsel, Petitioner filed form I-589 Application for Asylum,
13 Withholding of Removal, and Convention Against Torture and an Individual
14 Hearing was scheduled for November 14, 2025.
15

16 22. The November 14, 2025 Individual Hearing was rescheduled/continued
17 multiple times over the course of four months due to difficulties in obtaining
18 critical evidence for petitioner’s asylum application from key witnesses in
19 Guatemala and efforts to obtain substitute counsel after Petitioners attorney
20 withdrew representation. The Individual Hearing was eventually scheduled
21 for March 23, 2026.
22

23
24 23. On March 23, 2026, an Immigration Judge denied Petitioners petitions for
25 withholding of removal and protection under the Convention against
26 Torture. *See* Exhibit I.
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1 24. On April 22, 2026, Petitioner submitted an appeal with the Board of
2 Immigration Appeals (BIA). *See* Exhibit J. The appeal is still pending
3 resolution.
4

5 25. Immigration and Customs Enforcement (ICE) has detained Petitioner for
6 more than 16 months and yet he has not been provided with a bond hearing
7 before a neutral decisionmaker to determine whether his prolonged detention
8 is justified based on danger or flight risk.
9

10 26. Over the past several months, Immigration Judges throughout the country
11 have been denying bonds at habeas-mandated bond hearings based on “flight
12 risk” at concerning rates. *See Perez Velasquez v. Bondi*, No. 3:26-cv-01759-
13 GPC-DDL (S.D. Ca. Apr. 16, 2026), *Monroy Martinez v. Lyons*, No. 26-CV-
14 2173 JLS (AHG) (S.D. Ca. Apr. 17, 2026), *Said v. Noem*, No. 3:25-cv-938-
15 MOC, 2026 LX 47279 (W.D.N.C. Feb. 4, 2026); *Picado v. Hyde*, No. 26-cv-
16 065-JJM-PAS, 2026 LX 18501 (D.R.I. Feb. 9, 2026); *W.T.M. v. Bondi*, No.
17 2:25-cv-02428-RAJ-BAT, 2026 LX 50958, (W.D.Wash. Jan. 30, 2026). The
18 trend of constitutionally deficient bond hearings and the failure of many
19 Immigration Courts to consider the individual merits of each detainees’ bond
20 eligibility is a concerning trend.
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25 27. Petitioner requests immediate release because a bond hearing at the Otay
26 Mesa Immigration Court would be futile. Petitioner had a Custody
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28

1 Redetermination Hearing on March 10, 2025 and the hearing was deficient
2 in that the IJ did not analyze petitioners “danger to the community” or
3 “flight risk”. The IJ categorically denied bond based solely on INA 236(c)
4 and 101(a)(43)(N) grounds. Given the high likelihood that Petitioner will be
5 denied bond again under INA 236(c) and 101(a)(43)(N), immediate release
6 is proper.
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8

9 CUSTODY

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11 28. Petitioner is currently in Respondents’ legal and physical custody.

12 Respondents are detaining Petitioner at the Otay Mesa Immigration
13 Detention Center (OMDC) in San Diego, California. CoreCivic, Inc., a
14 Maryland corporation, operates that facility. Petitioner is under
15 Respondents’ and their agents’ direct control.
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19 JURISDICTION

20 29. This Court has jurisdiction under 28 U.S.C. § 2241; Art. I, § 9, cl. 2 of the
21 United States Constitution; and 28 U.S.C. § 1331, as Petitioner is presently
22 in Respondents’ custody under the United States’ color of authority, and
23 such custody violates the United States’ Constitution, laws, or treaties. Its
24 jurisdiction is not limited by a petitioner’s nationality, status as an
25 immigrant, or any other classification. See *Boumediene v. Bush*, 553 U.S.
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1 723, 747 (2008). This Court may grant relief under U.S. CONST. art. I, § 9,
2 cl. 2; U.S. CONST. amends. V and VIII; 28 U.S.C. §§ 1361 (mandamus),
3 1651 (All Writs Act), 2241 (habeas corpus).
4

5 30. Congress has preserved judicial review of challenges to prolonged
6 immigration detention. See *Jennings v. Rodriguez*, 583 U.S. 281 (2018)
7 (holding that 8 U.S.C. §§ 1226(e), 1252(b)(9) do not bar review of
8 constitutional challenges to prolonged immigration detention); see also *id.* at
9 *327 (Breyer, J., dissenting). (“8 U.S.C. § 1252(b)(9), . . . by its terms
10 applies only with respect to review of an order of removal”) (internal
11 quotation marks and brackets omitted).
12
13

14 31. Section 1252(f)(1) does not repeal this Court’s authority to grant the relief
15 Petitioner seeks because, *inter alia*, Petitioner is in removal proceedings. See
16 8 U.S.C. § 1252(f)(1) (exempting claims by “an individual alien against
17 whom proceedings . . . have been initiated”); *Reno v. Am.-Arab Anti-*
18 *Discrimination Comm.*, 525 U.S. 471, 482 (1999) (Section 1252(f) “does not
19 extend to individual cases”).
20
21

22 32. If Section 1252(f)(1) did bar the relief Petitioner seeks, it would violate the
23 Suspension Clause.
24

25 33. Moreover, 8 U.S.C. § 1252(g) does not strip this Court of authority to grant
26 relief. 8 U.S.C. § 1252(g) states that, with limited exceptions,
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1 *“no court shall have jurisdiction to hear any cause or claim by or on*
2 *behalf of any alien arising from the decision or action by the Attorney*
3 *General to commence proceedings, adjudicate cases, or execute*
4 *removal orders against any alien.”*

6 34. 8 U.S.C. § 1252(g) does not apply here because Petitioner is not challenging
7 the decision to commence proceedings. Instead, Petitioner challenges the
8 prolonged length of detention.

10 **REQUIREMENTS OF 28 U.S.C. § 2243**

12 35. The Court must grant the petition for writ of habeas corpus or issue an order
13 to show cause (OSC) to Respondents “forthwith,” unless the petitioner is not
14 entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must
15 require Respondents to file a return “within three days unless for good cause
16 additional time, not exceeding twenty days, is allowed.” *Id.*

18 36. Courts have long recognized the significance of the habeas statute in
19 protecting individuals from unlawful detention. The Great Writ has been
20 referred to as “perhaps the most important writ known to the constitutional
21 law of England, affording as it does a swift and imperative remedy in all
22 cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400
23 (1963).

25 37. Habeas corpus must remain a swift remedy. Importantly, “the statute itself

1 directs courts to give petitions for habeas corpus ‘special, preferential
2 consideration to insure expeditious hearing and determination.’” *Yong v.*
3 *INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (internal citations omitted). The
4 Ninth Circuit warned against any action creating the perception “that courts
5 are more concerned with efficient trial management than with the
6 vindication of constitutional rights.” *Id.*

7 8 9 **VENUE**

- 10
11 38. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S.
12 484, 493- 500 (1973), venue lies in the United States District Court for the
13 Southern District of California, the judicial district in which Petitioner
14 currently is detained.
15
16 39. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because
17 Respondents are employees, officers, and agencies of the United States, and
18 because a substantial part of the events or omissions giving rise to the claims
19 occurred in the Southern District of California.
20
21

22 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

- 23
24 40. In habeas claims, exhaustion of administrative remedies is prudential, not
25 jurisdictional. *See Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017).
26
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1 A court may waive the prudential exhaustion requirement if “administrative
2 remedies are inadequate or not efficacious, pursuit of administrative
3 remedies would be a futile gesture, irreparable injury will result, or the
4 administrative proceedings would be void.” *Id.*

6 41. Immigration judges in this District claim to have no jurisdiction to conduct a
7 custody redetermination hearing as to individuals procedurally situated like
8 the Petitioner. Indeed, in contravention to the INA and long-standing
9 precedent and practice, the Board of Immigration Appeals and Attorney
10 General have deemed no noncitizen eligible for bond before an immigration
11 judge---except for only noncitizens who entered the U.S. on a visa.
12

14 42. Exhausting administrative remedies by requesting release from ICE or an
15 Immigration Judge is also futile because Respondents contend Petitioner is
16 subject to mandatory detention under 8 U.S.C. § 1226 (c). As such, the
17 Respondents will not entertain any request to release Petitioner from custody
18 on bond.
19

21 43. Moreover, statutory exhaustion requirements do not apply to Petitioner’s
22 claim of unlawful custody in violation of his due process rights, and there
23 are no administrative remedies that she needs to exhaust. See *Am.-Arab Anti-*
24 *Discrimination Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995) (finding
25 exhaustion to be a “futile exercise because the agency does not have
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jurisdiction to review” constitutional claims); *In re Indefinite Det. Cases*, 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000).

44. Every day that Petitioner remains detained causes her harm that cannot be repaired. Petitioner suffers from [REDACTED] and other severe medical conditions that have gotten worse each day while under DHS custody. *See* Exhibit F. His continued detention puts his physical and mental health at greater risk, further warranting a waiver of the prudential exhaustion requirement.

PARTIES

45. Petitioner, Jose Angel Giron Rodas, is a noncitizen currently detained by Respondents.

46. Petitioner is currently in Respondents’ legal and physical custody at the Otay Mesa Immigration Detention Center in San Diego, California. Management and CoreCivic, Inc., a Maryland corporation, operates that facility.

47. Respondent Christopher LAROSE is the Warden of the Otay Mesa Detention Center where Petitioner is being held. Respondent Christopher LaRose oversees the day to-day operations of the Otay Mesa Detention Center and acts at the Direction of Respondents Divver, Lyons and Blanche. Respondent Christopher LaRose is a custodian of Petitioner and is named in his official capacity.

1 48. Respondent Markwayne MULLIN is the newly appointed Secretary of the
2 DHS and is named in his official capacity. DHS is the federal agency
3 encompassing ICE, which is responsible for the administration and
4 enforcement of the INA and all other laws relating to the immigration of
5 noncitizens. In his capacity as Secretary, Respondent MULLIN has
6 responsibility for the administration and enforcement of the immigration and
7 naturalization laws pursuant to section 402 of the Homeland Security Act of
8 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); see also 8
9 U.S.C. § 1103(a). Respondent MULLIN is the ultimate legal custodian of
10
11
12
13 Petitioner.

14 49. Respondent Patrick DIVVER is the Acting Field Office Director of ICE in
15 San Diego, California and is named in his official capacity. ICE is the
16 component of DHS that is responsible for detaining and removing
17 noncitizens according to immigration law and oversees custody
18 determinations. In his official capacity, he is the legal custodian of
19
20
21 Petitioner.

22 50. Respondent Todd M. LYONS is the Acting Director of ICE and is named in
23 his official capacity. Among other things, ICE is responsible for the
24 administration and enforcement of the immigration laws, including the
25 removal of noncitizens. In his official capacity as head of ICE, he is the legal
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1 custodian of Petitioner.

2 51. Respondent Daren MARGOLIN is the Acting Director of EOIR and has
3 ultimate responsibility for overseeing the operation of the immigration
4 courts and the Board of Immigration Appeals, including bond hearings.
5 Executive Office for Immigration Review (EOIR) is the federal agency
6 responsible for implementing and enforcing the INA in removal
7 proceedings, including for custody redeterminations in bond hearings. He is
8 sued in his official capacity.

9 52. Respondent Todd BLANCHE is the Attorney General of the United States
10 and the most senior official in the U.S. Department of Justice (DOJ) and is
11 named in his official capacity. He has the authority to interpret the
12 immigration laws and adjudicate removal cases. The Attorney General
13 delegates this responsibility to the Executive Office for Immigration Review
14 (EOIR), which administers the immigration courts and the BIA.

20 **LEGAL FRAMEWORK AND ANALYSIS**

21 **A) Substantive Due Process Constraints on Immigration Detention**

22
23 53. The Due Process Clause of the Fifth Amendment protects all “person[s]”
24 from deprivation of liberty “without due process of law.” U.S. Const.
25 amend. V.
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1 54. Due process extends to “all ‘persons’ within the United States, including
2 [non-citizens], whether their presence here is lawful, unlawful, temporary, or
3 permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)
4

5 55. While the immigration laws afford ICE discretion over its decisions to
6 arrest, detain, and revoke prior release decisions, those decisions are
7 nonetheless constrained by the laws Congress has enacted and the
8 requirements of the Constitution, including the Due Process Clause. See
9 generally *Id.* at 690; *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir.
10 2017).
11
12

13 56. This is because “[f]reedom from imprisonment—from government custody,
14 detention, or other forms of physical restraint—lies at the heart of the liberty
15 that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.
16

17 57. Immigration detention only comports with Due Process when it furthers the
18 government’s goals of “ensuring the appearance of [noncitizens] at future
19 immigration proceedings and preventing danger to the community.” *Id.* ICE
20 detention violates substantive Due Process where it is not justified by flight
21 risk or danger concerns. See *id.*
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24 58. For that reason, ostensibly “nonpunitive” detention pursuant to a blanket
25 policy under which the agency claims authority to arrest and detain all
26 noncitizens who it alleges are not lawfully present in the United States,
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without regard for whether they are a flight risk or danger, would violate the Due Process Clause. See *id.* So too would ICE detention for the purposes of meeting quotas, punishment, deterring immigration, or encouraging voluntary deportation. *R.I.L.-R v. Johnson*, 80 F. Supp. 3d 164, 188–89 (D.D.C. 2015) (observing that “[i]n discussing civil commitment more broadly, the [Supreme] Court has declared such ‘general deterrence’ justifications impermissible” and finding likely contrary to Due Process a deterrence policy pursuant to which DHS detained “one particular individual” for purposes of “sending a message of deterrence to other[s] who may be considering immigrating. (citing *Kansas v. Crane*, 534 U.S. 407, 412 (2002)).

59. All such detentions would be unlawful because they bear no reasonable relation to a legitimate government purpose. See *id.*; *Demore v. Kim*, 538 U.S. 510, 532–33 (Kennedy, J., concurring); *Kansas v. Hendricks*, 521 U.S. 346, 361–62 (1997); *Bell v. Wolfish*, 441 U.S. 520, 539 (1979).

**B. Procedural Due Process Constraints When Detained Under U.S.C §
1226 (c)**

60. Procedural Due Process ensures that no persons are deprived of their liberty absent a fair process.

1 61. The authority to detain certain noncitizens already in the country pending the
2 outcome of removal proceedings is found in 8 U.S.C. §§
3 1226(a) and 1226(c). *See Durand v. Allen*, Case No.: 3:23-cv-00279-RBM-
4 BGS, 2024 U.S. Dist. LEXIS 29823, 2024 WL 711607, at *2 (S.D. Cal. Feb.
5 21, 2024). "The first position, which sets out the general rule, places the
6 [noncitizen's] detention within the Attorney General's discretion." *Id.* "The
7 second provision, which is an exception to the general rule, makes detention
8 during removal proceedings mandatory when the [noncitizen] is
9 'inadmissible' or 'deportable' for specified reasons—usually because the
10 [noncitizen] has been convicted of a qualifying criminal
11 offense." *Id.* (citations omitted).

12 62. In *Demore v. Kim*, 538 U.S. 510, 123 S. Ct. 1708, 155 L. Ed. 2d 724 (2003),
13 the Supreme Court rejected a facial challenge to mandatory detention
14 under § 1226(c). "Finding that Congress was 'justifiably concerned' that
15 criminal noncitizens would 'fail to appear for their removal hearings in large
16 numbers,' the Court held that Congress 'may,' consistent with due process
17 restrictions on government power, 'require that persons such as respondent
18 be detained for the brief period necessary for their removal proceedings'
19 without an initial bond hearing." *Black v. Decker*, 103 F.4th 133, 141 (2nd
20 Cir. 2024) (quoting *Demore*, 538 U.S. at 513-14). "However,
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Justice Kennedy's concurring opinion, which created the majority rejecting the facial challenge to mandatory detention under § 1226(c), specifically noted that 'a lawful permanent resident [] such as respondent could be entitled to an individualized determination as to his risk of flight and dangerousness if the continued detention became unreasonable or unjustified.'" *Abdul-Samed v. Warden*, Case No. 1:25-cv-00098-SAB-HC, 2025 U.S. Dist. LEXIS 142973 2025 WL 2099343, at *5 (E.D. Cal. July 25, 2025) (quoting *Demore*, 538 U.S. at 532 (Kennedy, J., concurring)); see also *Nielsen v. Preap*, 586 U.S. 392, 420, 139 S. Ct. 954, 203 L. Ed. 2d 333 (2019) ("Our decision today on the meaning of [§ 1226(c)] does not foreclose as-applied challenges"); *Reid v. Donelan*, 17 F.4th 1, 7 (1st Cir. 2021) ("we adhere to the notion that the Due Process Clause imposes some form of reasonableness limitation upon the duration of detention under section 1226(c)") (cleaned up); *Black*, 103 F.4th at 149 (noting that the Supreme Court "said nothing about whether due process may eventually require a hearing") (emphasis in original); *German Santos v. Warden*, 965 F.3d 203, 209-10 (3rd Cir. 2020) (holding that noncitizens detained under § 1226(c) may bring as-applied due process challenges).

63. Although the Ninth Circuit has not yet taken a position on whether due process requires a bond hearing for noncitizens detained pursuant to §

1 1226(c), [n]umerous courts have held that unreasonably prolonged detention
2 under 8 U.S.C. § 1226(c) without a bond hearing violates due
3 process." *Blake v. Mullin*, No. 3:26-cv-00844-BTM-SBC, 2026 U.S. Dist.
4 LEXIS 73989, 2026 WL 913130, at *2 (S.D. Cal. Apr. 2, 2026);
5 *Maldonado-Romero v. Warden of Imperial Reg'l Det. Facility*, No. 3:26-cv-
6 02366-RBM-SBC, 2026 U.S. Dist. LEXIS 106196 (S.D. Cal. May 13,
7 2026), *Gonzaga v. Larose*, No. 26-cv-02941, 2026 U.S. Dist. LEXIS 113145
8 (S.D. Cal. May 21, 2026); *Black v. Dir. Thomas Decker*, 103 F.4th 133 (2d
9 Cir. 2024); *Reid v. Donelan*, 17 F.4th 1 (1st Cir. 2021); *Santos v. Warden*
10 *Pike Cty. Corr. Facility*, 965 F.3d 203 (3d Cir. 2020); *Henriquez v. Garland*,
11 No. 22-cv-00869-EJD, 2022 U.S. Dist. LEXIS 106045 (N.D. Cal. Jun. 7,
12 2022); *Lopez v. Garland*, 631 F. Supp. 3d 870 (E.D. Cal. 2022); *Juarez v.*
13 *Wolf*, No. 20-1660 RJB, 2021 U.S. Dist. LEXIS 106645 (W.D. Wash. Jun.
14 7, 2021); and *Joao de Oliveira Viegas v. Green*, 370 F. Supp. 3d 443 (D.N.J.
15 2019).

21 FIRST CLAIM FOR RELIEF

22 A. Violation of Petitioner's Procedural Due Process Rights

23 U.S. Const. amend. V

24
25 64. Petitioner's due process rights have been violated because she has been
26 subject to unreasonably prolonged detention. To determine whether a
27

petitioner's detention has been unreasonably prolonged, Courts in the Ninth Circuit have applied the *Banda v. McAleenan*'s six-factor analysis, which weighs: (1) total length of detention to date; (2) likely duration of future detention; (3) conditions of detention; (4) delays in the removal proceedings caused by the detainee; (5) delays in the removal proceedings caused by the government; and (6) the likelihood that the removal proceedings will result in a final order of removal. *Banda*, 385 F. Supp. 3d at 1106.

1. Total Length Of Detention:

65. The Petitioner has been detained for over 16 months. While 16 months of detention does not presumptively establish unreasonably prolonged detention, in the 1225(b) context it is also not so little time as to preclude constitutional scrutiny. *See Hamideh Sadeqi v. Larose*, No. 25-CV-2587-RSH-BJW, 2025 U.S. Dist. LEXIS 222822, 2025 WL 3154520, at *3 (S.D. Cal. Nov. 12, 2025) (“The Court agrees with Respondents that the length of Petitioner's detention to date—almost 12 months—does not by itself, without more, establish prolonged detention in violation of due process. But neither does that length of detention serve as a safe harbor or insulate Petitioner's case from constitutional review.”). Additionally, courts have previously found that similar or shorter lengths of detention were unreasonable. *See, e.g., Mingzhi Gao v. Larose*, No. 25-CV-2084-RSH-SBC, 2025 U.S. Dist. LEXIS 190572, 2025 WL 2770633, at *5

(S.D. Cal. Sept. 26, 2025) (“The Court finds that Petitioner’s detention for over 10 months without a bond hearing, in the context of the specific circumstances described above, has become unreasonable and violates due process.”); *Amado v. United States Dep’t of Just.*, No. 25-CV-2687-LL-DDL, 2025 U.S. Dist. LEXIS 217453, 2025 WL 3079052, at *6 (S.D. Cal. Nov. 4, 2025) (“Courts have found detention over seven months without a bond hearing weighs toward a finding that it is unreasonable.”); *Masood v. Barr*, No. 19-CV-07623-JD, 2020 U.S. Dist. LEXIS 4809, 2020 WL 95633, at *3 (N.D. Cal. Jan. 8, 2020) (finding detention for nearly nine months weighs in favor of the petitioner); *Zadvydas v. Davis* (2001) 533 U.S. 678 (detention beyond six months becomes prolonged.).

66. This factor weighs in Petitioner’s favor.

2. Likely Duration of Future Detention:

67. The second *Banda* factor requires consideration of “how long the detention is likely to continue absent judicial intervention; in other words, the anticipated duration of all removal proceedings—including administrative and judicial appeals.” *Banda*, 385 F. Supp. 3d at 1119.

68. Courts throughout the country have acknowledged the unpredictability of immigration court proceedings and the variances in length of detention.

“While the Court cannot definitively determine the duration of petitioner’s

1 future detention, based on the current record, it appears likely petitioner will
2 face many more months and potentially years in detention, ‘especially if
3 there is a petition for review before the Court of Appeals.’ *Belqasim v.*
4 *Bostock*, No. 2:25-CV-01282-LK-TLF, 2025 U.S. Dist. LEXIS 224772,
5 2025 WL 3466971, at *9 (W.D. Wash. Oct. 28, 2025), *report and*
6 *recommendation adopted sub nom. Belqasim v. Hermosillo*, No. 2:25-CV-
7 01282-LK, 2025 U.S. Dist. LEXIS 223710, 2025 WL 3170929 (W.D. Wash.
8 Nov. 13, 2025); *Guatam v. Corr. Corp. of Am.*, No. 3:25-CV-3600-JES-DEB,
9 2026 U.S. Dist. LEXIS 994, 2026 WL 25846, at *5 (S.D. Cal. Jan. 5, 2026)
10 (“[A] removal order may not become final until after the appeals Petitioner
11 could file, to both the Board of Immigration Appeals and Ninth Circuit...These
12 appeals can take a long time.”); *Abubakar Abdul-Samed v. Warden of the*
13 *Golden State Annex Det. Facility*, No. 1:25-CV-00098-SAB-HC, 2025 U.S.
14 Dist. LEXIS 142973, 2025 WL 2099343, at *7 (E.D. Cal. July 25, 2025)
15 (“Although the Court recognizes that future events are difficult to predict, the
16 Court nevertheless finds that in the event Petitioner’s applications for relief
17 from removal are denied, Petitioner’s possible administrative appeal and
18 judicial review by the Ninth Circuit will be sufficiently lengthy such that this
19 factor weighs in favor of Petitioner.”).

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26 69. Here, the length of future detention is unclear. Petitioner through pro-bono
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1 counsel filed a Petition for Review with the Board of Immigration Appeals
2 (BIA) on April 22, 2026. *See* Exhibit J. Petitioner has raised legitimate due
3 process concerns with the IJ's denial of withholding of removal and CAT
4 protection.
5

6 70. At this is time, it is not known how much longer the adjudication of
7
8 Petitioner's appeal will take. If Petitioner is not granted relief, he will appeal
9 the decision to the appropriate court. Petitioner may be subject to detention
10 for many more months if not years before final adjudication of their case.
11

12 71. This factor falls in favor of Petitioner.
13

14 3. Conditions of Detention.

15 72. For the third factor, "[t]he more that the conditions under which the
16 noncitizen is being held resemble penal confinement, the stronger his
17 argument that he is entitled to a bond hearing." *Banda*, 385 F. Supp. 3d at
18 1119. Courts have recognized that the conditions in local detention
19 centers are "indistinguishable from penal confinement." *See Kydyrali*, 499 F.
20 Supp. 3d at 773; *Amado v. United States Dep't of Just.*, No. 25-CV2687-
21 LL(DDL), 2025 U.S. Dist. LEXIS 217453, 2025 WL 3079052, at *6 (S.D.
22 Cal. Nov. 4, 2025). Further, Petitioner suffers from PTSD, sleep insomnia,
23 anxiety and experiences severe episodes of depression. His medical records
24 indicate that his mental condition and PTSD has been exacerbated by his
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1 detention and puts him at risk for further deterioration. Petitioner has also been
2 subject to verbal abuse, inedible food quality and unsanitary conditions. *See*
3 Exhibit A. Petitioner has filed dozens of grievances and requests for medical
4 attention. *See* Exhibit L. Petitioners colorectal condition continues to
5 deteriorate under the care of CoreCivic staff and can potentially claim his life if
6 untreated.
7

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9 73. This factor weighs in favor of Petitioner.

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11 **4 & 5 Delays in Removal**

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13 74. The fourth and fifth factors concern delays in the removal proceedings
14 caused by Petitioner or the Respondents. These factors are meant to weigh
15 and protect against delay tactics; good-faith actions to litigate and defend are
16 not considered. *See Lopez v. Garland*, 631 F. Supp. 3d 870, 881 (E.D. Cal.
17 2022) (“Petitioner is entitled to raise legitimate defenses to removal ... and
18 such challenges to his removal cannot undermine his claim that detention
19 has become unreasonable.”); *Gonzalez v. Bonnar*, No. 18-CV-05321-JSC,
20 2019 U.S. Dist. LEXIS 12636, 2019 WL 330906, at *4 (N.D. Cal. Jan. 25,
21 2019) (“The government cites no authority for the proposition that a
22 petitioner who pursues his available legal remedies must forego any
23 challenge to the reasonableness of his detention in the interim and the Court
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1 is unaware of any.”); *Liban M.J. v. Sec'y of Dep't of Homeland Sec.*, 367 F.
2 Supp. 3d 959, 965 (D. Minn. 2019) (“[T]he Court agrees Petitioner has not
3 engaged in dilatory tactics and finds this factor favors granting
4 relief...Petitioner is entitled to raise legitimate defenses to removal, including
5 filing a petition for conditional residence, and such challenges to his removal
6 cannot undermine his claim that detention has become unreasonable.”).

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9 75. The Petitioner was unreasonably detained at a tent near the US-Mexico
10 border for more than half a month (16 days) before he was officially served
11 with a Notice to Appear. *See* Exhibit A. This delay rest solely on the
12 Respondent.
13

14 76. Moreover, delays attributed to Petitioner should not be counted against him
15 as they were good faith requests made to give him time to find pro-bono
16 legal counsel and to supplement his form I-589 with critical evidence needed
17 for his claim. Which are critical components of a successful removal defense
18 case.
19
20

21 77. These factors slightly favor Petitioner.
22

23 **6. Likelihood of Final Removal Order.**
24

25 78. For the sixth *Banda* factor, the Court evaluates the likelihood that the
26 removal proceedings will result in a final order of removal, or “[i]n other
27 words, the Court considers whether the noncitizen has asserted any defenses
28

1 to removal.” *Banda*, 385 F. Supp. 3d at 1120. Here, Petitioner claims he has
2 been persecuted [REDACTED] Based
3 on this persecution, the Respondent has determined that Petitioner's fears are
4 credible. While Petitioner was initially denied relief by an immigration
5 judge, Counsel has subsequently elevated credible challenges to this order to
6 the BIA. Petitioner’s claims at the BIA include that the Immigration Judge
7 erred legally and factually by failing to consider all of the respondents
8 proposed social groups and erred in their finding that Petitioners persecutor
9 was a private actor and did not act with government acquiescence. While it
10 remains unclear how the BIA will eventually rule, Petitioner has so far
11 presented a case that reduces the likelihood of a final removal order. Thus,
12 this factor favors Petitioner.
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17 79. For habeas mandated bond hearings, an overwhelming majority of courts
18 that have held that the government must justify the continued confinement of
19 a non-citizen detainees under § 1226(c) by clear and convincing evidence
20 that the non-citizen is a flight risk or a danger to the community.” *Sanchez-*
21 *Rivera*, 2023 U.S. Dist. LEXIS 3858, 2023 WL 139801, at *7
22
23 n.5 (citing *Singh v. Holder*, 638 F.3d 1196, 1200 (9th Cir. 2011)); see
24 also *Martinez v. Clark*, 124 F.4th 775, 785 (9th Cir. 2024) (stating that “the
25 BIA properly noted that the government bore the burden to establish by clear
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1 and convincing evidence that [the petitioner] is a danger to the community"
2 regarding a bond hearing for a noncitizen detained under § 1226(c)); *Phi*
3 *Pham v. Becerra*, Case No. 23-cv-01288-CRB, 2023 U.S. Dist. LEXIS
4 56944, 2023 WL 2744397, at *7 (N.D. Cal. Mar. 31, 2023).

6 80. Petitioner believes that immediate release is a proper remedy because a bond
7 hearing at Otay Mesa would be futile. An IJ has already rejected release
8 without doing a true analysis of Petitioners "danger" or "flight risk". *See*
9 Exhibit G. However, if the Court deems that a bond hearing is proper,
10 Petitioner respectfully request that the Respondent bear the burden of proof.
11 *See Singh v. Holder*, 638 F.3d 1196, 1200 (9th Cir. 2011).

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15 **SECOND CLAIM FOR RELIEF**

16 **Violation of Petitioner's Substantive Due Process**

17 **U.S. Const. amend. V**
18

19 81. Immigration detention only comports with Due Process when it furthers the
20 government's goals of "ensuring the appearance of [noncitizens] at future
21 immigration proceedings and preventing danger to the community."
22 *Zadvydas*, 533 U.S. at 690.

23
24 82. Petitioner has now been detained by ICE for over 16 months. If the BIA
25 does not render a favorable decision, Petitioner plans on appealing to any
26 subsequent courts. Courts consistently find detention beyond this threshold
27
28

triggers due process scrutiny. See *Kydyrali*, 499 F.Supp. 3d at 774–75.

83. Conditions of confinement also raise constitutional concerns as Petitioner’s mental, emotional and physical health is deteriorating by the day. See Exhibit A, E, F and L generally.

84. Conditions at the Otay Mesa Immigration Detention Center are punitive in nature. The facility is overcrowded causing frequent exposure to respiratory illnesses like COVID 19 and the flu, and the bathrooms and showers are so filthy they are almost unusable. Petitioner has also suffered excruciating pain daily due to a poorly treated medical condition by CoreCivic Medical staff. Petitioner suffers excruciating pain due to rectal bleeding and his condition is worsening by the day. See Exhibit A.

85. Petitioner poses no risk of flight and no danger to the community. He has been living in the US for over 20 years without incident. In 2025, he was arrested and found guilty of transporting a non-citizen. See Exhibit C.

86. Petitioner’s continued detention violates the Due Process Clause because the conditions of detention are punitive and not rationally related to any legitimate government purpose. He is not a flight risk nor a danger to the community. He only wishes to return to his wife and get appropriate treatment for his medical condition.

PRAYER FOR RELIEF

WHEREFORE, the Petitioner prays that this Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Enjoin Respondents from transferring Petitioner outside the jurisdiction of the U.S. District Court for the Southern District of California pending the resolution of this case;
3. Issue a Writ of Habeas Corpus;
4. Order Respondents to immediately release Petitioner from immigration detention;
5. Alternatively, conduct an immediate bond hearing where DHS bears the burden of justifying Petitioner's continued detention by clear and convincing evidence;
6. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412
7. Grant such further relief as the Court deems just and proper.

Dated: June 12, 2026

Respectfully submitted,

By: s/ Nicholas Paul

Pro Bono Attorney for Petitioner

Email: nick@panasd.org

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am one of Petitioner's attorneys. I have discussed with the Petitioner the events described in the Petition and reviewed Petitioner's immigration file. Based on said review and those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge. Executed on this June 12, 2026, in San Diego, California.

Dated: June 12, 2026

Respectfully submitted,

By: s/ Nicholas Paul

Pro Bono Attorney for Petitioner

Email: nick@panasd.org