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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Jesus Baltierra Rocha,

Petitioner,

v.

Patrick, DIVVER, Field Office Director of Enforcement and Removal Operations, San Diego Field Office, Immigration and Customs Enforcement; Todd M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement; Markwayne Mullin, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Todd BLANCHE, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Christopher J. LAROSE, Warden of Otay Mesa Detention Facility,

Respondents.

Case No. '26CV4205 BAS MSB

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

Petitioner, Jesus Baltierra Rocha, has been detained pending his immigration proceedings for 6 months since January 20, 2026. This Court should "join[] the majority of courts across the country in concluding that his unreasonably prolonged detention under 8 U..S.C. §1225(b) without an individualized bond hearing violates due process." *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020)(Battaglia J.).

JURISDICTION

1. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Otay Mesa Detention Facility in San Diego, California.
2. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).
3. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.
4. The federal district courts have jurisdiction under Section 2241 to hear habeas claims by individuals challenging the lawfulness of their detention by ICE. *See Jennings v. Rodriguez*, 583 U.S. 281, 290-92 (2018).

VENUE

5. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973), venue lies in the United States District Court for the Southern District of California, the judicial district in which Petitioner currently is detained.

6. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Southern District of California.

REQUIREMENTS OF 28 U.S.C. § 2243

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

8. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and

receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

9. Petitioner, Jesus Baltierra Rocha, is currently detained by Respondents in the Otay Mesa Detention Facility.

10. Respondent Patrick Divver ("Divver") is the Director of the San Diego Field Office of ICE's Enforcement and Removal Operations division. As such, Divver is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

11. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Mr. Mullin has ultimate custodial authority over Petitioner and is sued in his official capacity.

12. Respondent Todd Lyons is the Director of ICE. He is responsible for the administration of ICE and the implementation and enforcement of the immigration laws, including immigrant detention. As such, Mr. Lyons is a legal custodian of Petitioner. He is sued in his official capacity.

13. Respondent Todd Blanche is the Acting Attorney General of the United States. She is responsible for the Department of Justice, of which the

Executive Office for Immigration Review and the immigration court system it operates is a component agency. He is sued in her official capacity.

14. Respondent Christopher LaRose ("LaRose") is the Senior Warden at the Otay Mesa Detention Center as Warden of the, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

STATEMENT OF FACTS

Petitioner, Jesus Baltierra Rocha, is a 36-year-old native and citizen of Mexico and was born on [redacted]. Petitioner experienced harm, mistreatment, and threats in Mexico and he fear returning to Mexico. He entered the United States on or about August 2008, without inspection. On April. 9, 2026, he applied for asylum before Immigration Court. He was issued a Notice of Referral on February 5, 2026, after the immigration judge vacated the negative reasonable fear finding of the DHS immigration officer.

He has had three mater calendar hearings, on March 10, 2026, April 15, 2026, and May 28, 2026. His individual hearing concluded on June 29, 2026 and his applications for withholding of removal and protection under the United Nations Convention Against Torture were denied. His case is currently pending before the Board of Immigration Appeals. Therefore, the decision of the Immigration Judge is not final.

LEGAL FRAMEWORK

A. Prolonged Detention

II. The Fifth Amendment's Due Process Clause prohibits prolonged immigration detention without a bond hearing

This habeas petition presents a question about whether and when the Fifth Amendment's Due Process Clause countermands the government's statutory authority to detain immigrants without bond hearings. "[N]early all district courts that have considered the issue agree that prolonged mandatory detention pending removal proceedings, without a bond hearing, will—at some point—violate the right to due process." *Id.* (cleaned up) (collecting cases).These courts have taken their cues largely from *Zadvydas v. Davis*, 533 U.S. 678 (2001). There, the Supreme Court applied the constitutional avoidance canon to hold that persons detained following a final removal order may not be subjected to indefinite detention. *Id.* at 699. Though *Zadvydas's* holding rests on statutory rather than constitutional grounds, the Court justified its constitutional avoidance approach by describing the serious due process concerns that indefinite detention would occasion:

> A statute permitting indefinite detention of an alien would raise a serious constitutional problem. The Fifth Amendment's Due Process Clause forbids the Government to 'depriv[e]' any 'person ... of ...liberty ... without due process of law.' Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that that Clause

> protects. *See Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). And this Court has said that government detention violates that Clause unless the detention is ordered in a criminal proceeding with adequate procedural protections, *see United States v. Salerno*, 481 U.S. 739, 746 (1987), or, in certain special and 'narrow' nonpunitive 'circumstances,' *Foucha, supra*, at 80, where a special justification, such as harm-threatening mental illness, outweighs the 'individual's constitutionally protected interest in avoiding physical restraint.' *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997).

As the Ninth Circuit put it in *Jennings v. Rodriguez's 583 U.S. 281, 297 (2018)* wake, these considerations raise "grave doubts that any statute that allows for arbitrary prolonged detention without any process is constitutional or that those who founded our democracy precisely to protect against the government's arbitrary deprivation of liberty would have thought so." *Rodriguez v. Marin,* 909 F.3d 252, 256 (9th Cir. 2018). The same concerns have led district courts to conclude that immigrants cannot be detained indefinitely without bond hearings pending their immigration proceedings.

III. Courts have reached different conclusions about when immigration detention becomes indefinitely prolonged, but Petitioner would prevail under any standard

Though courts agree that due process mandates a bond hearing when detention grows unreasonably prolonged, they disagree about how to assess whether a particular individual's detention has reached that point. *Sanchez-Rivera v. Matusewski,* No. 22-CV-1357-MMA (JLB), 2023 WL 139801, at *5-6. (S.D. Cal. Jan 9, 2023) (Anello J.) (surveying the various approaches). Some courts have

"conclude[d]...that detention becomes prolonged after six months and entitles [a petitioner] to a bond hearing." *Rodriguez v. Nielson*, No. 18-CV-04187-TSH, 2019 WL 7491555, at *6 (N.D. Cal. Jan 7, 2019). In that case, Petitioner would automatically qualify, as he has been detained for 6 months.

Other courts have adopted various factors tests. *See Sanchez-Rivera*, 2023 WL 139801, at *5-6 (surveying different approaches). Courts generally agree that the relevant factors include:

(1) "the total length of detention to date,"

(2) "the likely duration of future detention," and

(3) The delays in the removal proceedings caused by the petitioner and the government."

Id. Some courts also consider:

(1) "the conditions of detention," and

(2) "the likelihood that the removal proceedings will result in a different final order."

Id.; but see Lopez v. Garland, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022) (holding that the fourth and fifth factors and "not particularly suited to assisting the Court in determining whether detention has become unreasonable and due process requires

a bond hearing"); *Sanchez-Rivera*, 2023 WL 139801, at *5-6 (agreeing with *Lopez*).[1] Petitioner would prevail under any of these factors tests.

First, the "most important factor," the length of detention, favors Petitioner. *Banda*, 385 F. Supp. 3d. at 1118. In assessing this factor, "[i]t is important to bear in mind the context: The detention that is being examined here is the detention of a person who has never been found to pose a danger to the community or to be likely to flee if released." *Jamal A. v. Whitaker,* 358 F. Supp. 3d. 853, 859 (D. Minn. 2019). Petitioner has been detained 6 months. *See Ashemuke v. ICE Filed Off. Dir.* No. C23-1592-RSL-MLP, 2024 WL 1683797, at *4 (W.D. Wash. Feb. 29, 2024), *report and recommendation adopted*, No. C23-1592-RSL, 20241676681 (W.D. Wash. Apr. 18, 2024) ("approximately eleven months"); *Brissett v. Decker,* 324 F. Supp. 3d 444, 452 (S.D.N.Y. 2018) ("over nine months"); *Perez v. Decker,* No. 18-CV-5279 (VEC), 2018 WL 3991497, at *5 (S.D.N.Y) Aug. 20, 2018) ("More than nine months").

Second, Petitioner has reason to anticipate significant future detention during his removal proceedings. His notice of appeal has been filed with the Board of Immigration Appeals. No briefing schedule has been issued. *See Banda*, 385 F. Supp. 3d at 1119. All told, "[t]his process may take up to two years or longer." *Id.*

[1] Courts also disagree about whether to account for any criminal convictions that led to the deportation. *Sanchez-Rivera*, 2023 WL 139801, at *5-6. But such factors – if appropriate at all – are irrelevant where, as here, the individual is not being removed due to criminal convictions.

Because "Petitioner's future detention can last several more months or even years[,]" this factor favors Petitioner. *Abdul Kadir v. LaRose,* No. 25-CV-1045-LL-MMP, 2025 WL 2932654, at *5 (S.D. Cal. Oct. 15 2025) (Lopez, J.).

Third, Petitioner did not delay his proceedings, but moved forward expeditiously. He has complied every filing deadline and timely filed his notice of appeal.

Fourth, Petitioner conditions of confinement weigh in favor of a bond hearing. At Otay Mesa Detention Center, detainees are "locked up behind razor wire and concrete walls in a secured facility, forced to wear a color-coded prisoner jump suit, forbidden from accessing the internet, restricted access to outdoor space, restricted on visitation, and guarded at all times with armed guards authorized to inflict punishment for violations of rule." *Abdul Kadir,* 2025 WL 2932654, at *5. "Petitioner's confinement at OMDC is 'indistinguishable from penal confinement.'" *Abdul Kadir*, 2025 WL 2932654, at *5 (quoting *Kydyrali*, 499 F. Supp. 3d at 773).

Fifth, there is a likelihood that the removal proceedings will result in a different outcome. Petitioner has presented a credible claim for withholding of removal, and protection under the Convention Against Torture.

Under any test, then, Petitioner is entitled to a bond hearing in which Respondents bear the burden of establishing whether Petitioner is a flight risk or a danger to the community.

CLAIM FOR RELIEF

Violation of the INA:

Request for Relief Pursuant to *Maldonado Bautista and the Fifth Amendment Due Process Clause*

15. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

16. The Fifth Amendment Due Process Clause prohibits the government from continuing to detain Petitioner a bond hearing.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

b. Order that Petitioner shall not be transferred outside the Southern District of California.

c. Issue a writ of habeas corpus requiring that within one day, Respondents release Petitioner;

d. Alternatively, issue a writ of habeas corpus requiring Respondents to release Petitioner unless they provide a bond hearing within seven days where the Government bears the burden of establish risk of fight and dangerousness;

e. Order that Respondents shall not re-detain or continue to detain Petitioner absent a material change in circumstances;

f. Order that Respondents shall provide Petitioner's counsel with advance written notice of their position in advance of any bond hearing; and

a. Grant any other and further relief that this Court deems just and proper.

DATED this 22 of July 2026

Respectfully Submitted:

/s/ Tina Malek

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