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DETAINED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT

Rodriguez Castro, Humberto

Petitioner,

v.

MARKWAYNE MULLIN, Secretary of the Department of Homeland Security, TODD BLANCHE, 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.

Case No. '26CV4286 JLS SBC

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

Petitioner Humberto Rodriguez Castro is a native and citizen of Mexico who entered the United States in or around 1995 and has lived here for approximately thirty years. He is married, raised four children, and has a long employment history and extensive community ties. He has been detained at the Otay Mesa Detention Center since January 2026.

In more than six months of detention, Petitioner received a custody determination — a bond hearing on March 30, 2026 at which, under governing Ninth Circuit practice, he bore the burden of proving he was neither a danger nor a flight risk. That determination is now months stale, and no further hearing has occurred or is scheduled. A subsequent custody redetermination was set but was overtaken by a removal order before it could be heard.

Petitioner's appeal to the Board of Immigration Appeals, filed July 16, 2026, remains pending. No administratively final order of removal exists. Detained appeals of this kind routinely take months to over a year, and any subsequent petition for review to the Ninth Circuit would extend the timeline by years. Petitioner thus faces the prospect of years of civil detention, arising from a record whose most serious component is a single Class B misdemeanor conviction, with no forum in which the Government is ever required to justify his continued confinement.

The Fifth Amendment does not permit prolonged civil detention on those terms. When immigration detention becomes prolonged, due process requires an individualized bond hearing at which the Government bears the burden of justifying continued detention by clear and convincing evidence. Petitioner has never received such a hearing. This petition seeks one.

Jurisdiction and Venue

This Court has jurisdiction under 28 U.S.C. § 2241(c)(3), which authorizes a writ of habeas corpus for a person held "in custody in violation of the Constitution or laws or treaties of the United States." The Supreme Court has confirmed that § 2241 supplies jurisdiction over constitutional challenges to immigration detention. *Zadvydas v. Davis*, 533 U.S. 678, 687–88 (2001). The Ninth Circuit has recognized § 2241 jurisdiction over challenges to prolonged immigration confinement. *Diouf v. Napolitano*, 634 F.3d 1081, 1086 (9th Cir. 2011).

Neither 8 U.S.C. § 1226(e) nor 8 U.S.C. § 1252 strips this Court of jurisdiction. Section 1226(e) bars review of discretionary judgments as to bond amount and conditions; it does not bar "challenges [to] the statutory framework that permits [the alien's] detention without bail." *Demore v. Kim*, 538 U.S. 510, 517 (2003). Petitioner does not ask this Court to reweigh the discretionary determination made on March 30, 2026 or to set a bond amount. He asks whether the Constitution permits his continued detention, now prolonged and projected to last years, without a hearing at which the Government must justify it.

Venue is proper because Petitioner is detained at Otay Mesa Detention Center, 7488 Calzada De La Fuente, San Diego, California 92154. The proper respondent is the immediate custodian. *Rumsfeld v. Padilla*, 542 U.S. 426, 434–35 (2004). Respondent LaRose, as Warden, is that person and is within this Court's territorial jurisdiction.

Parties

Petitioner HUMBERTO RODRIGUEZ CASTRO is a citizen and national of Mexico currently detained at Otay Mesa Detention Center, 7488 Calzada De La Fuente, San Diego, California 92154. He brings this petition through counsel.

Respondent MARKWAYNE MULLIN is the Secretary of the U.S. Department of Homeland Security and is responsible for the administration and enforcement of the immigration laws of the United States, including the policies and practices governing the detention of noncitizens at Otay Mesa Detention Center. He is sued in his official capacity only.

Respondent TODD BLANCHE is the Attorney General of the United States and is responsible for the Executive Office for Immigration Review, including the immigration courts and the Board of Immigration Appeals. He is sued in her official capacity only.

Respondent TODD M. LYONS is the Acting Director of U.S. Immigration and Customs Enforcement and is responsible for the detention and removal operations of ICE nationwide, including at Otay Mesa Detention Center. He is sued in his official capacity only.

Respondent JOSEPH FREDEN is the Acting Field Office Director of the San Diego Field Office of ICE Enforcement and Removal Operations and is responsible for ICE detention operations within San Diego and Imperial Counties, including at Otay Mesa Detention Center. He is sued in his official capacity only.

Respondent CHRISTOPHER LAROSE is the Warden of Otay Mesa Detention Center and is the immediate custodian with day-to-day responsibility for Petitioner's physical confinement. As Petitioner's immediate custodian, he is the proper respondent for purposes of this habeas petition. *See Rumsfeld v. Padilla*, 542 U.S. 426, 434–35 (2004). He is sued in his official capacity only.

Statement of Facts

1. Petitioner was born [redacted], in Quechultenango, Guerrero, Mexico. He turned fifty while detained.

2. Petitioner entered the United States in or around 1995 without inspection and has resided here continuously for approximately thirty years. He was never placed in expedited removal and never received a credible fear interview.

3.On January 11, 2026, Petitioner was arrested in Wasatch County, Utah — in the interior, far from any port of entry — and charged with four misdemeanor offenses.

4.ICE detained Petitioner in January 2026 and transferred him to Otay Mesa Detention Center, where he has remained. On January 20, 2026, DHS served a Notice to Appear charging him under INA §§ 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I), and placed him in removal proceedings under INA § 240.

5.Petitioner's first custody request was denied on the ground that the Immigration Court lacked jurisdiction to consider bond, on the theory that he was an applicant for admission subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). Petitioner obtained habeas relief in this District establishing the Immigration Court's jurisdiction to conduct a custody redetermination.

6.On March 20, 2026, the Wasatch County criminal matter was resolved. The charge of assault on a peace officer (Utah Code § 76-5-102.4), obstruction of justice (§ 76-8-306), and unlawful

detention (§ 76-5-304) were each dismissed with prejudice. The assault charge was dismissed because surveillance video established that no assault occurred; the physical contact at issue was Petitioner's hat falling onto an officer. Petitioner entered a plea of guilty to a single Class B misdemeanor, interfering with a peace officer (§ 76-8-305), and was convicted.

7.On March 30, 2026, the Immigration Judge exercised jurisdiction and conducted a custody redetermination. By that date the assault, obstruction, and unlawful-detention charges had been dismissed with prejudice, and proof of those dispositions was presented. The Immigration Judge nonetheless denied bond, finding that Petitioner presented a danger to the community and a risk of flight. That is the only individualized custody determination Petitioner has received. At it, consistent with prevailing Ninth Circuit practice for such hearings, Petitioner bore the burden of proof.

8. Apart from the single 2026 conviction, Petitioner's criminal history consists of two misdemeanors from 2004 — giving false information to a police officer and an open-container offense — and several citations for driving without a license over the years. He has no felony conviction, no crime of violence, and no conviction involving injury to any person.

9. A third custody redetermination was scheduled. Before it could be held, on June 22, 2026, Immigration Judge O'Brien pretermitted and denied Petitioner's applications for withholding of removal and protection under the Convention Against Torture and ordered him removed to Mexico. The scheduled bond hearing never went forward.

10. Petitioner timely appealed to the Board of Immigration Appeals on July 16, 2026, challenging the pretermission of his claims without a full evidentiary hearing and the resolution of disputed factual issues without testimony. The appeal remains pending. No administratively final order of removal exists.

11.Petitioner is married with a family here. He has been the primary financial provider for his household for decades and has a long employment history. He has described church involvement and community service. His fear claim concerns threats connected to [redacted] in Guerrero, Mexico, including the kidnapping of relatives.

12. Petitioner has appeared at every proceeding in his immigration case and has never failed to appear. He retained counsel, filed applications for relief, and sought custody review. He has sought no continuance for purposes of delay.

13. Conditions at Otay Mesa are functionally penal: detainees are held behind razor wire and concrete, wear detention uniforms, are supervised by armed guards, and have severely restricted movement, visitation, and outside contact.

EXHAUSTION

There is no statutory exhaustion requirement under 28 U.S.C. § 2241. *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001), *abrogated on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). Any exhaustion obligation is prudential and may be waived where administrative remedies are inadequate, futile, or void, or where irreparable injury will result. *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004).

Petitioner's claim is a constitutional challenge to the duration of his detention — that prolonged confinement without a hearing at which the Government bears the burden violates the Fifth Amendment. The Board of Immigration Appeals cannot grant that relief, because it "does not have jurisdiction to determine the constitutionality of the statutes it administers." *Padilla-Padilla v. Gonzales*, 463 F.3d 972, 977 (9th Cir. 2006); *see Iraheta-Martinez v. Garland*, 12 F.4th 942,

949 (9th Cir. 2021). Requiring administrative exhaustion of a claim the agency has no power to adjudicate would be futile.

Leonardo v. Crawford, 646 F.3d 1157 (9th Cir. 2011), does not require a contrary result. *Leonardo* concerned a detainee who sought to challenge, through habeas, the discretionary outcome of a bond hearing without first appealing that outcome to the Board. Petitioner does not challenge the discretionary outcome of his March 30 hearing. He contends that the passage of time since that hearing has rendered his detention constitutionally prolonged, entitling him to a new hearing under a different burden of proof — a claim that did not exist at the time of the March 30 determination and that the Board could not grant in any event.

Finally, exhaustion would compound irreparable harm. Each additional day of prolonged detention without a constitutionally adequate hearing is an injury no later ruling can undo.

Legal Argument

I. THIS COURT HAS JURISCTION UNDER 28 U.S.C. § 2241 AND PETITIONER REMAINS ELIGIBLE FOR BOND-RELIEF

Section 2241 confers jurisdiction on federal district courts to issue writs of habeas corpus to persons held in custody "in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). The Supreme Court has expressly confirmed that § 2241 provides a vehicle for constitutional challenges to immigration detention. *Zadvydas*, 533 U.S. at 687–88. The Ninth Circuit has likewise recognized § 2241 jurisdiction over claims that prolonged

immigration confinement violates due process. *Diouf*, 634 F.3d at 1086. Because this petition raises exactly that constitutional claim, this Court has jurisdiction to hear it.

Petitioner's detention is governed by 8 U.S.C. § 1226(a), not § 1225(b)(2)(A). This District's prior habeas ruling established the Immigration Court's jurisdiction to conduct a custody redetermination, and the Immigration Judge thereafter exercised that jurisdiction and reached the discretionary danger and flight-risk questions that only § 1226(a) presents. Having litigated the § 1225(b) classification and having proceeded under § 1226(a) thereafter, Respondents cannot now recharacterize Petitioner as a § 1225(b)(2)(A) applicant for admission. A person subject to § 1225(b)(2)(A) mandatory detention does not receive a discretionary bond hearing; Respondents' own conduct places Petitioner under § 1226(a).

Because no administratively final order of removal exists while the appeal to the Board remains pending, detention authority has not shifted to § 1231. Petitioner remains detained under § 1226(a) and remains bond-eligible

II. PROLONGED DETENTION WITHOUT A HEARING AT WHICH THE GOVERNMENT BEARS THE BURDEN VIOLATES THE FIFTH AMENDMENT

A. Governing Framework

The Due Process Clause protects noncitizens facing removal. Zadvydas, 533 U.S. at 693. "Freedom from imprisonment — from government custody, detention, or other forms of physical restraint — lies at the heart of the liberty that [the Due Process] Clause protects." Id. at 690. In *Jennings v. Rodriguez*, 583 U.S. 281 (2018), the Supreme Court rejected a statutory basis for

periodic bond hearings but expressly reserved — and remanded — the constitutional question whether prolonged detention without an adequate bond hearing violates due process. That question is presented here.

The Ninth Circuit has long recognized that prolonged immigration detention triggers heightened procedural protection. In *Casas-Castrillon v. DHS*, 535 F.3d 942 (9th Cir. 2008), the court held that a noncitizen whose detention under § 1226(a) has become prolonged is entitled to a bond hearing before an Immigration Judge, and in *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011), the court held that at such a hearing the Government must justify continued detention by clear and convincing evidence. While *Jennings* displaced the statutory reasoning underlying periodic-hearing rules, the constitutional principle — that prolonged civil detention requires an individualized hearing at which the Government bears the burden — continues to govern and has been widely applied by the district courts on remand.

This framework distinguishes an initial bond hearing from one required by prolonged detention. The Ninth Circuit has held that placing the burden on the noncitizen at an initial § 1226(a) hearing is constitutionally permissible. *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022). Petitioner's claim does not contest that. His point is that his single hearing was an initial one, held months ago under that lesser standard, and that the prolongation of his detention since has triggered his entitlement to a new hearing.

B. Petitioner's detention is prolonged

Courts assessing whether immigration detention has become unreasonably prolonged weigh the length of detention to date, the anticipated duration of future detention, the reasons for the delay, and the conditions of confinement.

Regarding Length, Petitioner has been detained more than six months, the benchmark the Supreme Court identified as presumptively reasonable in *Zadvydas*, 533 U.S. at 701, and his only custody hearing occurred months ago.

Petitioner's appeal to the Board was filed July 16, 2026. Detained appeals routinely take six months to over a year, and a subsequent petition for review to the Ninth Circuit would add one to three years. Petitioner realistically faces two to three years or more of civil detention. It is this forward-looking horizon, not elapsed time alone, that renders his continued detention without a burden-shifted hearing constitutionally unreasonable.

None of the delay is attributable to Petitioner. He has appeared at every hearing, sought no continuance for delay, and pursued his claims diligently. The delay flows from the pretermission of his applications without an evidentiary hearing — the ruling now on appeal — and from the ordinary timeline of detained appellate review.

Confinement at Otay Mesa is functionally penal, which strengthens the due process case for a hearing.

C. Petitioner has never received a hearing at which the Government bore the burden

The sole custody determination Petitioner has received was his March 30, 2026 hearing, at which he bore the burden of proving he was neither a danger nor a flight risk. Prolonged detention requires the opposite allocation: the Government must prove, by clear and convincing evidence, that no condition or combination of conditions will reasonably assure his appearance and the safety of the community. Singh, 638 F.3d at 1203–04. Petitioner's minor, non-violent record and his unbroken history of appearance are precisely the matters a properly allocated hearing would weigh — and that the Government has never been required to overcome.

D. Demore v. Kim does not control

Demore v. Kim, 538 U.S. 510 (2003), upheld mandatory detention under § 1226(c) on grounds absent here. Demore concerned detention predicated on qualifying criminal convictions; Petitioner's sole conviction is a Class B misdemeanor that does not trigger § 1226(c). Demore rested on the brevity of such detention — roughly five months on average, id. at 529 — which Petitioner has already exceeded with years potentially remaining. And Demore itself contemplated that individualized review may be required where detention becomes unreasonable. Id. at 532 (Kennedy, J., concurring).

III. PETITIONER IS NOT SUBJECT TO MANDATORY DETENTION UNDER 8 U.S.C. § 1226(c)

To the extent Respondents invoke § 1226(c), it does not apply. As shown above, the Immigration Judge conducted a discretionary bond hearing — relief unavailable to a § 1226(c) detainee — which forecloses the contention that Petitioner is subject to mandatory detention. In any event, the charges that could have supported a § 1226(c) classification (assault, obstruction, unlawful

detention) were dismissed with prejudice, and a dismissed charge is not a conviction under INA § 101(a)(48)(A).

Claim and Prayer for Relief

Detaining Petitioner Without a Bond Hearing Violates the Fifth Amendment's Due Process Clause because a routine bond hearing before a randomly selected Immigration Judge at Otay Mesa would not adequately redress the constitutional violation, Petitioner respectfully requests the following relief:

1. **Issue a writ of habeas corpus** and declare that Petitioner's continued prolonged detention without an individualized hearing at which the Government bears the burden violates the Fifth Amendment;

2. **Order Respondents to provide an individualized bond hearing** before an Immigration Judge within seven days, at which: (a) the Government bears the burden of establishing by clear and convincing evidence that Petitioner is a danger to the community or a flight risk; (b) the Immigration Judge considers Petitioner's ability to pay and alternatives to detention in setting any bond or conditions; and (c) the Immigration Judge issues a written decision stating the reasons for the custody determination;

3. **Order that the automatic stay provision of 8 C.F.R. § 1003.19(i)(2) shall not apply** to any bond grant resulting from the ordered hearing, and that Petitioner be released upon posting of bond;

4. **Retain jurisdiction** to review the resulting custody determination for compliance with this Court's order;

5. **In the alternative**, order Petitioner's release on reasonable conditions of supervision;

6. Grant such other relief as the Court deems just and proper.

DATED this 24 of July 2026.

/s/ Morris Jacob Wilner
MORRIS JACOB WILNER
Attorney for Petitioner