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11 **UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA (Las Vegas)**

13  
14 **L.R.**

*Petitioner,*

Case No.: 2:25-cv-02019-RFB-BNW

v.

17 **KRISTI NOEM, U.S. DEPARTMENT OF**  
**HOMELAND SECURITY; PAMELA J.**  
 18 **BONDI, U.S. DEPARTMENT OF**  
**JUSTICE; TODD LYONS, JASON**  
 19 **KNIGHT, U.S. IMMIGRATION AND**  
**CUSTOMS ENFORCEMENT; JOHN**  
 20 **MATTOS,**

*Respondents.*

**REPLY IN SUPPORT**  
**OF PETITION FOR A WRIT OF**  
**HABEAS CORPUS**

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1 Respondents offer no response to Petitioner’s argument that his Fifth Amendment right to  
2 due process entitles him to release or at a minimum a bond hearing. Respondent offers only  
3 statutory arguments, and seeks to focus on Petitioner’s 28-year-old criminal record. This is not a  
4 criminal proceeding. Petitioner stands by the arguments set forth in his Petition for Writ of  
5 Habeas Corpus, ECF No. 1 at 12–18, arguing that he is entitled to relief on purely constitutional  
6 grounds.

7 **a. This case is fundamentally different from *Arteaga-Martinez* because that case**  
8 **Court did not address constitutional due process.**

9 The government makes a statutory argument that 8 U.S.C. § 1231(a)(6) does not  
10 explicitly mention nor grant a noncitizen relief even after the six-month presumption of  
11 reasonableness. ECF No. 6 at 3. The government cites the Supreme Court’s decision in *Johnson*  
12 *v. Arteaga-Martinez*, which held that § 1231(a)(6) does not have a requirement written into it to  
13 grant bond hearings to noncitizens detained for more than sixth months after a final removal  
14 order. 596 U.S. 573, 576 (2022). However, the Court in *Arteaga-Martinez* looked solely at the  
15 question of plain text statutory interpretation. *Id.* It did not reach the question of whether there is  
16 a *constitutional* issue with prolonged detention without release or the opportunity for a bond  
17 hearing. *Id.* at 583 (remanding the case because “[t]he courts below did not reach *Arteaga-*  
18 *Martinez*’s constitutional claims... We leave them for the lower courts to consider in the first  
19 instance.”).

20 Petitioner relies on the Fifth Amendment. “[T]he Fifth Amendment entitles [noncitizens]  
21 to due process of law in [removal] proceedings.” *Reno v. Flores*, 507 U.S. 292, 306 (1993). Even  
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1 when the statute seems to allow detention, the Fifth Amendment right to due process imposes  
2 limits. *See Arechiga v. Archambeault*, No. 2:23-cv-00600-CDS-VCF, 2023 U.S. Dist. LEXIS  
3 140947, at \*8 (D. Nev. Aug. 11, 2023). Detention as long as seven months or more even during  
4 removal proceedings raises Fifth Amendment problems. *See Black v. Dir. Thomas Decker*, 103  
5 F.4th 133 (2d Cir. 2024). Respondents do not address these issues at all in their Response.

6 **b. Petitioner’s due process rights compel relief to prevent unconstitutionally**  
7 **prolonged detention without justification.**

8 Although Respondents are correct that sixth month mark is nor a bright-line rule. *See*  
9 *Jennings v. Rodriguez*, 583 U.S. 281, 301 (2018). However, the presumption is that such  
10 prolonged detention is unreasonable. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). *See also*  
11 *Arteaga-Martinez*, 596 U.S. at 582 (“*Jennings* did not overrule or abrogate *Zadvydas*,”).  
12 *Zadvydas* provides the central framework for understanding what is considered a reasonable  
13 length of detention after a removal order. Once a noncitizen has been detained for more than six  
14 months following a final removal order, it is the government’s responsibility to overcome the  
15 presumption that continued detention is unreasonable. *See Zadvydas*, 533 U.S. at 701. The test is  
16 whether removal is reasonably foreseeable; if not, then continued detention is unconstitutional.  
17 *Id.*

18 Here, Petitioner was issued a final order of removal with protection under the Convention  
19 Against Torture on March 14, 2025. He has asked the Board of Immigration Appeals to reopen  
20 his case to allow him to litigate his fears of returning to Mexico, but the Board has not yet agreed  
21 to do so. His removal to his country of nationality, El Salvador, is deferred. As of the date of this  
22 reply, therefore, Petitioner's post-removal order detention has gone on for nearly eight months.

1 Although § 1231(a)(6) does allow for discretionary detention post-removal order if there are  
2 concerns about a noncitizen's risk to the community, that still does not validate unreasonably  
3 prolonged detention.

4 The Supreme Court has already decided in *Zadvydas* that a statute permitting indefinite  
5 detention would raise a serious constitutional problem. 533 U.S. at 690. Therefore, the  
6 government's reading of § 1231(a)(6) would render it unconstitutional because it would allow  
7 the government to detain Petitioner essentially forever as long as it can claim that Petitioner  
8 might be a risk to the community. The government cannot rely solely on Petitioner's criminal  
9 record to say that continued detention is reasonable because the right to due process requires that  
10 removal happen within a foreseeable period in order to be reasonable. *See Zadvydas*, 533 U.S. at  
11 701. At this stage, Petitioner's criminal history has nothing to do with the inquiry of whether his  
12 removal will occur in a reasonable period of time, so it should have no bearing on whether or not  
13 he gets relief in this court. This court should follow the constitutional standard set out in  
14 *Zadvydas*, not the statutory standard that the government urges.

15 Even outside of the *Zadvydas* question, which focuses only on the period of detention  
16 post-removal order, Petitioner asserts that he is entitled to relief because the total time of his  
17 detention has exceeded what is reasonable and constitutionally permitted without government  
18 justification. Other district courts in the Ninth Circuit and nationwide have already decided that  
19 release or an opportunity for a bond hearing transcends even statutory requirements to detain  
20 certain noncitizens when that detention has become unreasonably prolonged.<sup>1</sup> Courts range from

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22 <sup>1</sup> *See e.g., Lopez v. Garland*, 631 F. Supp. 3d 870, 880 (E.D. Cal. 2022) (holding that a bond  
23 hearing is required after 12 months of detention); *Banda v. McAleenan*, 385 F. Supp. 3d 1099,  
1107 (W.D. Wash. 2019) (upholding a magistrate ruling compelling a bond hearing after 18

1 finding that detention is prolonged when that detention lasts as long as thirty six months or even  
2 as little as nine months.<sup>2</sup> By a majority of courts' standards that have already decided this  
3 question, Petitioner's detention already constitutes prolonged detention that is in violation of the  
4 his due process rights unless the government can prove that detention is justified by clear and  
5 convincing evidence.

6        Though the government focuses on Petitioner's criminal record, that alone is not enough  
7 to deny a noncitizen their constitutionally guaranteed due process rights. In fact, the petitioner in  
8 *Zadvydas* had a serious criminal record and that did not stop the Court from granting him relief  
9 to avoid violating his constitutional rights. 533 U.S. at 694. The *Zadvydas* court additionally  
10 explained that “[i]n cases in which preventive detention is of potentially *indefinite* duration, we  
11 have also demanded that the dangerousness rationale be accompanied by some other special  
12 circumstance, such as mental illness, that helps to create the danger.” *Id.* at 691.

13        In an analogous case, *Arechiga*, from another district court in Nevada, the court looked at  
14 a petitioner with a record of a “particularly serious crime.” *Arechiga v. Archambeault*, No. 2:23-

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16 months of detention); *Sibomana v. LaRose*, No. 3:22-cv-933-LL-NLS, 2023 U.S. Dist. LEXIS  
17 69635, at \*9 (S.D. Cal. Apr. 20, 2023) (holding that a bond hearing was required after 19 months  
18 of detention); *Kydyrali*, 499 F. Supp. 3d at 774 (holding that a bond hearing was required after  
19 27 months of detention); *Leke v. Hott*, 521 F. Supp. 3d 597, 605 (E.D. Va. 2021) (holding that a  
20 bond hearing was required after 24 months of detention); *Jamal A. v. Whitaker*, 358 F. Supp. 3d  
21 853, 861 (D. Minn. 2019) (holding that a bond hearing was required after 19 months of  
22 detention); *Franklin K. B. v. Warden, Hudson Cnty. Corr. Facility*, Civil Action No. 18-9933  
(KSH), 2019 U.S. Dist. LEXIS 94754, at \*12 (D.N.J. June 3, 2019) (holding that a bond hearing  
23 was required after 16 months of detention) *Perez v. Decker*, No. 18-CV-5279 (VEC), 2018 U.S.  
Dist. LEXIS 141768, at \*13-16 (S.D.N.Y. Aug. 20, 2018) (holding that a bond hearing was  
required after 9 months of detention).

<sup>2</sup> *Id.*

1 cv-00600-CDS-VCF, 2023 U.S. Dist. LEXIS 140947, at \*4 (D. Nev. Aug. 11, 2023). In  
2 *Arechiga*, the petitioner's serious criminal record did not prevent the court from granting him  
3 relief as required by his constitutional right to due process—in fact, it was never a central part of  
4 the court's inquiry.<sup>3</sup> Whether a petitioner will ultimately be granted release is not for the court to  
5 decide at this stage—the court needs only to decide whether a petitioner is constitutionally  
6 entitled to an opportunity to be heard.

7 Further, the petitioner in *Arechiga* was detained pursuant to § 1225(b), which statutorily  
8 mandates detention. *Id.* at \*5. However, the court still held that the petitioner's constitutional  
9 rights trumped statutory requirements and ordered that he receive relief in the form of a bond  
10 hearing. *Id.* \*8. This court should follow suit and hold that Petitioner is entitled to relief because  
11 of his constitutional right to due process without restricting that relief based on statutory  
12 requirements or evidence of criminal history. Constitutional rights are not reserved only for  
13 people with no criminal record. Petitioner seeks constitutional relief, for which Respondents  
14 offer no rebuttal. With no reasonable end in sight, this court should intervene.

### 15 CONCLUSION

16 Petitioner asks the Court to allow him to file an Amended Petition rather than rule on the  
17 Petition as it presently stands. However, for the reasons given here and for those provided in the  
18 original Petition, this court should grant the Petition for a Writ of Habeas Corpus.

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22 <sup>3</sup> The court's only mention of the crime occurs on page 4 as it explains the procedural history.  
23 The petitioner's criminal record never appears in the analysis.

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DATED this 11th day of November, 2025.

Respectfully Submitted,

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/s/Victoria Callier  
Victoria Callier  
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/s/Katrina Pineda  
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