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

11 DEILI PORFIDI MAURICIO CANO,

12  
13 Petitioner,

14 vs.

15 CHRISTOPHER J. LAROSE, Senior  
16 Warden, Otay Mesa Detention Center;  
17 PATRICK DIVVER, Field Office  
18 Director, San Diego Office of Detention  
19 and Removal, U.S. Immigration and  
20 Customs Enforcement; TODD M.  
21 LYONS, Acting Director, U.S.  
22 Immigration and Customs Enforcement,  
23 U.S. Department of Homeland Security;  
24 and KRISTI NOEM, Secretary, U.S.  
25 Department of Homeland Security.

26 Respondents.

Case No.: 3:25-cv-03334-DMS-KSC

**PETITIONER'S TRIAL  
BRIEFING**

Name of Judicial Officer: Hon. Dana  
M. Sabraw  
Courtroom Number: 13A  
Date & Time of Hearing: December 23,  
2025, at 10:00 AM

**I. INTRODUCTION**

Pursuant to the Court’s Order Dated December 18, 2025, for additional briefing, Petitioner respectfully submits this Supplemental Brief to clarify factual and legal issues concerning “(1 whether Petitioner’s detention is unconstitutionally prolonged when applying the six-factor balancing test articulated in *Banda v. McAleenan*, 385 F. Supp. 3d 1099 (W.D. Wash. 2019); (2) whether the re-detention of Petitioner on March 18, 2025, after releasing her on her own recognizance on March 11, 2025, violates due process under *Mathews v. Eldridge*, 424 U.S. 319 (1976); and (3) whether 8 U.S.C. § 1226(a) applies to those who, like Petitioner, were initially detained near the border and have not been residing in the United States for multiple years.”

**II. FACTUAL BACKGROUND**

Petitioner is a 24-year-old citizen and national of Guatemala. Petitioner came to the U.S. fleeing violence and death. In Guatemala, Petitioner was persecuting for actively participating in Christianity. Her father is a leader in the church, and [REDACTED]. [REDACTED]. Petitioner was captured by one of the members of the [REDACTED] [REDACTED]. Petitioner was able to escape, and these gang members are still in search of Petitioner.

Petitioner has had no departures, and he has no criminal convictions.

1 Petitioner’s pretermmit was favorable for DHS, and an order of removal to Honduras  
2 was granted on November 21, 2025, which is currently pending appeal.

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4 **III. PETITIONER’S CURRENT DETENTION STATUS**

5 Petitioner is currently detained at Otay Mesa Detention Center. Despite the  
6 reopening of his removal proceedings, Petitioner remains detained, even though he  
7 previously complied with ICE supervision and he has no history of flight.  
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9 Department of Homeland Security recently submitted a Motion to Pretermmit  
10 ahead of his Individual Hearing, which Petitioner has opposed.  
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12 **IV. PETITIONER’S DETENTION IS UNCONSTITUTIONALLY**  
13 **PROLONGED WITH APPLYING THE SIX-FACTOR TEST**  
14 **ARTICULATED IN *BANDA V. MCALEENAN***  
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16 The issue before the Court is whether the detention of Ms. Mauricio Cano has  
17 become unconstitutionally prolonged under the six-factor test established in *Banda*  
18 *v. McAleenan*, 385 F. Supp. 3d 1099 (W.D. Wash. 2019). The Due Process Clause  
19 of the Fourteenth Amendment prohibits the government from depriving any person  
20 of liberty without due process of law, and prolonged detention without adequate  
21 justification violates this fundamental constitutional protection.  
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24 In this case, Ms. Mauricio Cano has been detained for an extended period under  
25 conditions that no longer serve a legitimate regulatory purpose. The total length of  
26 detention to date; the likely duration of future detention; the conditions of  
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1 detention; delays in the removal proceedings caused by the detainee; delays in the  
2 removal proceedings caused by the government; and the likelihood that the  
3 removal proceedings will result in a final order of removal collectively  
4 demonstrate that the detention has crossed the constitutional line. Under the *Banda*  
5 framework, the government bears the burden of justifying continued detention by  
6 clear and convincing evidence, a burden it has failed to meet.  
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9 The facts of this case, when analyzed under the *Banda* test, compel the  
10 conclusion that Ms. Mauricio Cano's detention is unconstitutional. Accordingly,  
11 Ms. Mauricio Cano respectfully requests that this Court grant the requested relief  
12 and order their immediate release or, in the alternative, a bond hearing to assess the  
13 necessity of continued detention.  
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#### 16 **A. Total Length of Detention Violates Due Process**

17 The total length of detention is a critical factor in determining whether due  
18 process has been violated. Courts have consistently recognized that prolonged  
19 detention implicates a substantial liberty interest. *Diaz v. Garland*, 53 F.4th 1189,  
20 1223 (9th Cir. 2022) (citing *Demore v. Kim*, 538 U.S. 510, 529 (2003)). While  
21 there is no bright-line rule for the maximum permissible length of detention, the  
22 longer the detention, the more likely it is to be deemed punitive rather than  
23 regulatory. *United States v. Gelfuso*, 838 F.2d 358, 359 (9th Cir. 1988).  
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26 Courts have consistently recognized that detention exceeding six months is  
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1 presumptively unreasonable unless the government can demonstrate a significant  
2 likelihood of removal in the reasonably foreseeable future. *Zadvydas v. Davis*, 533  
3 U.S. 678, 701 (2001). Here, Petitioner has been detained since March 18, 2025,  
4 without a bond hearing, which is beyond the six-month presumption under  
5 *Zadvydas*, and the government has yet to provide evidence to rebut this  
6 presumption. The absence of a bond hearing deprives Petitioner of the opportunity  
7 to challenge the necessity of continued detention, violating procedural due process  
8 protections. See *Jennings v. Rodriguez*, 583 U.S. 281, 330 (2018).

11 **B. Likely Duration of Future Detention Renders It Unconstitutional**

12 Detention becomes unconstitutional when removal is not reasonably  
13 foreseeable. The Supreme Court has held that indefinite detention without a  
14 legitimate regulatory purpose raises serious substantive due process concerns.  
15 *Prieto-Romero v. Clark*, 534 F.3d 1053, 1065 (9th Cir. 2008) (reasoning that  
16 continued detention of aliens whose removal was not reasonably foreseeable did  
17 not serve the purpose of immigration detention). The government bears the burden  
18 of demonstrating that removal is likely to occur within a reasonable timeframe.  
19 *Zadvydas*, 533 U.S. at 701. Here, the government has failed to provide evidence  
20 that removal is imminent. Without such evidence, the likely duration of future  
21 detention strongly supports a finding of unconstitutionality. As the Supreme Court  
22 held in *Zadvydas*, detention must bear a reasonable relation to its purpose, and  
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1 when removal is unlikely, continued detention is unjustified. *Zadvydas*, 533 U.S. at  
2 700.

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4 **C. Conditions of Detention are Punitive Rather Than Regulatory**

5 The conditions of detention must serve a regulatory purpose, such as ensuring  
6 the detainee's presence at a future hearing or preventing danger to the community.

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8 When detention becomes punitive, it violates due process. *United States v. Torres*,  
9 995 F.3d 695, 708 (9th Cir. 2021) (citing *United States v. Salerno*, 481 U.S. 739,  
10 747 (1987)).

11  
12 In this case, the conditions of confinement are harsh and exacerbate Petitioner's  
13 health and well-being. Such conditions are inconsistent with the regulatory purpose  
14 of detention and further support a finding of unconstitutionality.

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16 **D. Delays in the Removal Proceedings Caused by the Detainee Do Not**  
17 **Justify Prolonged Detention**

18 Delays attributable to the detainee, such as filing frivolous appeals, may weigh  
19 against a finding of unconstitutional detention. However, legitimate assertions of  
20 legal rights should not be held against the detainee.

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22 There is no evidence that Petitioner has caused significant delays in the removal  
23 proceedings. The Petitioner's active assertion of their rights, such as filing habeas  
24 petitions or requesting bond hearings, demonstrates a proactive effort to challenge  
25 their detention. Courts have recognized that such efforts underscore the importance  
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1 of due process protection and weigh heavily against prolonged detention. See *Diaz*,  
2 53 F.4th at 1223. This factor, therefore, does not justify prolonged detention.

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4 **E. Delays in the Removal Proceedings Caused by the Government Weigh**  
5 **Heavily Against the Constitutionality of Detention**

6 Delays caused by the government inefficiency of lack of diligence weigh  
7 heavily against the government in the due process analysis. Here, the  
8 Government's actions have contributed significantly to the prolonged detention of  
9 Petitioner. The Government has not found an individualized showing of the  
10 continued detention of Petitioner. Such delays undermine the regulatory purpose of  
11 detention and render it excessive.  
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14 **F. The Likelihood of Removal Within a Reasonable Timeframe is**  
15 **Uncertain**

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17 The Government must demonstrate that removal is reasonably foreseeable to  
18 justify continued detention. *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Jennings v.*  
19 *Rodriguez*, 583 U.S. 281 (2018). When removal is unlikely or significantly  
20 delayed, detention becomes unconstitutional. Here, the likelihood of removal  
21 within a reasonable timeframe is uncertain. The Government has failed to provide  
22 clear and convincing evidence that removal is imminent, further supporting a  
23 finding of unconstitutionality.  
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26 For the foregoing reasons, Petitioner respectfully requests that this Court find  
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1 their detention unconstitutionally prolonged under the six-factor test established in  
2 *Banda v. McAleenan*, 385 F. Supp. 3d 1099 (W.D. Wash. 2019), and order their  
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4 immediate release. In the alternative, Petitioner requests that this Court order a  
5 bond hearing at which the Government must justify continued detention by clear  
6 and convincing evidence.

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8 **V. RE-DETENTION OF PETITIONER VIOLATES DUE PROCESS**  
9 **UNDER *MATHEWS V. ELDRIDGE***

10 Under the balancing framework established in *Mathews v. Eldridge*, 424 U.S.  
11 319 (1976), the re-detention of Petitioner fails to satisfy constitutional due process  
12 requirements. The individual liberty interest is substantial, the risk of error is  
13 unacceptably high in the absence of notice or a hearing, and the government's  
14 interest in re-detention is not compelling, given the lack of exigent circumstances  
15 or new evidence. This Court must intervene to ensure that the fundamental right to  
16 liberty is not arbitrarily or unjustly curtailed.  
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18  
19 Petitioner was released on her own recognizance on March 11, 2025, reflecting  
20 a determination that she was neither a flight risk nor a danger to the community.  
21 On March 18, 2025, she was re-detained without notice, a hearing, or any clear  
22 justification. The procedural safeguards provided before or after the re-detention  
23 remain unclear, and the Government has not specified any exigent circumstances  
24 or new evidence necessitating the re-detention.  
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1       **A. The Private Interest Affected by Re-Detention is Substantial**

2       An individual’s liberty interest is a fundamental right protected by the Due  
3       Process Clause. Courts have consistently recognized that freedom from bodily  
4       restraint lies at the core of the liberty protected by the Due Process Clause. *Reno v.*  
5       *Flores*, 507 U.S. 292, 315 (1993). The prior release of recognizance underscores  
6       the weight of this interest, as it reflects a determination that the individual is  
7       neither a flight risk nor a danger to the community. The timing of the re-detention,  
8       occurring seven day after release, further undermines any claim of urgency or  
9       necessity. Detention must bear a reasonable relation to its purpose, such as ensuing  
10      appearance at future proceedings. The seven-day delay suggests that the  
11      Government’s action may not be reasonably related to these objectives.

12       **B. The Risk of Erroneous Deprivation is Unacceptably High**

13      The absence of procedural safeguards, such as notice, a hearing, or a written  
14      explanation, significantly increases the risk of erroneous deprivation. Without  
15      these safeguards, the individual is deprived of the opportunity to contest the basis  
16      for re-detention, heightening the likelihood of error.

17      Additional safeguards, such as notice and a hearing, would substantially  
18      reduce the risk of erroneous deprivation. Notice would inform Petitioner of the  
19      reasons for re-detention, enabling her to prepare a defense. A hearing would  
20      provide an opportunity to contest the allegations and present evidence, ensuring  
21

1 that the decision to re-detain is based on accurate and reliable information. See  
2 *Mathews v. Eldridge*, 424 U.S. 319 (1976).  
3

#### 4 **C. Government Interest Does Not Outweigh the Individual's Liberty**

##### 5 **Interest**

6 The Government's interest in re-detention is weak in the absence of exigent  
7 circumstances or new evidence. The prior determination of eligibility for release  
8 on recognizance indicates that the Petitioner is neither a flight risk nor a danger to  
9 the community.  
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11 Providing additional procedural safeguards imposes minimal administrative  
12 burdens on the government. Courts have held that due process is flexible and  
13 requires procedural protections tailored to the specific circumstances. See *Higgins*  
14 *v. Port of Newport*, 121 F.3d 1281 (9th Cir. 1997).  
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17 For the foregoing reasons, the re-detention of Petitioner, who was released  
18 on her own recognizance just seven days prior, violates the procedural due process  
19 safeguards cannot be justified under the balancing test established in *Mathews*. The  
20 individual liberty interest outweighs the government's interest, particularly in the  
21 absence of exigent circumstances or new evidence.  
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#### 24 **VI. 8 U.S.C. § 1226(a) GOVERNS PETITIONER'S DETENTION**

25 The Court must determine whether 8 U.S.C. § 1226(a), which provides for  
26 discretionary detention and procedural safeguards such as bond hearings, applies to  
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1 Petitioner, or whether their detention remains governed by 8 U.S.C. § 1225(b),  
2 which mandates detention without bond.  
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4 The resolution of this issue has significant implications for the Petitioner's  
5 liberty interests and procedural rights. The statutory language, case law, and the  
6 procedural history of the Petitioner's detention strongly supports the conclusion  
7 that § 1226(a) governs their detention. This provision ensures that the Petitioner is  
8 entitled to a bond hearing and other procedural protections, which are essential to  
9 safeguarding their due process rights. The Court's decision in this matter will not  
10 only clarify the applicable legal framework but also ensure that the Petitioner's  
11 detention complies with the statutory and constitutional requirements of U.S.  
12 immigration law.  
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16 The Petitioner entered the United States without inspection and was detained  
17 near the border. She has not resided in the U.S. for multiple years and currently has  
18 a pending asylum application. The procedural history of the Petitioner's detention  
19 suggests a transition to discretionary detention under § 1226(a).  
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21 Section 1226(a) applies to individuals already present in the U.S. and provides  
22 for discretionary detention pending removal proceedings. Unlike 1225(b), which  
23 mandates detention without bond for individuals seeking admission, § 1226(a)  
24 allows for release on bond or conditional parole. In *Jennings v. Rodriguez*, 583  
25 U.S. 281 (2018), the Supreme Court clarified that § 1226(a) applies to individuals  
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1 already present in the United States and provides for discretionary detention with  
2 bond hearings. The Petitioner’s pending asylum application demonstrates their  
3 active pursuit of legal relief and places Petitioner within the discretionary detention  
4 framework of § 1226(a). Courts have recognized that individuals detained under  
5 1226(a) are entitled to bond hearings, which provide an opportunity to challenge  
6 the necessity of their detention. *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1260  
7 (W.D. Wash. 2025) (noting that individuals who entered without inspection are  
8 generally detained under 1226(a) rather than § 1225(b), as they are considered  
9 present in the U.S. rather than “arriving aliens.”); *Martinez v. Hyde*, 792 F. Supp.  
10 3d 211, 215 (D. Mass. 2025) (emphasizing that release in recognizance under §  
11 1226(a) applies to individuals already in the country, even if they were not  
12 inspected at the border.)

13 For the foregoing reasons, Petitioner respectfully requests that this Court find §  
14 1226(a) governs their detention, entitling them to the procedural protections  
15 provided under this statutory framework, including the right to a bond hearing.

## 16 VII. RELIEF REQUESTED

17 For the foregoing reasons, Petitioner respectfully requests that the Court:

- 18 1. Grant the Petition for Writ of Habeas Corpus;
- 19 2. Order Petitioner’s Immediate release, or in the alternative,
- 20 3. Order a bond hearing before an Immigration Judge.

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Respectfully,

/S/ Mario Portugal  
Attorney for Petitioner