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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

GERARDO GARCIA RAMOS,

Petitioner,

vs.

KRISTI NOEM, ET AL,

Respondents.

Case No.: 26-cv-1652-RBM-BJW

**PETITIONER'S REPLY
RESPONDENTS' RETURN TO
HABEAS PETITION**

**Judge: Hon. RUTH BERMUDEZ
MONTENEGRO**

**I. THE PETITION CHALLENGES ONLY THE DURATION OF
DETENTION AND FALLS WITHIN CORE HABEAS JURISDICTION**

Respondents argue that this Court lacks jurisdiction because, in their view, the Petition challenges the removal proceedings. The Petition does not do so. It challenges only the continued fact of Petitioner's civil immigration detention, which has become unreasonably prolonged in light of its length, the absence of a reasonably foreseeable end, and the Government's lack of diligence in bringing custody proceedings to a timely resolution.

1 A challenge to the lawfulness of continued custody is properly brought
2 under 28 U.S.C. § 2241. District courts in this District routinely exercise habeas
3 jurisdiction over as-applied challenges to prolonged detention, including where
4 detention nominally arises under 8 U.S.C. § 1226(a). See, e.g., *Phan v. Warden of*
5 *the Otay Mesa Detention Facility*, No. 3:25-cv-02369 (S.D. Cal.); *McSweeney v.*
6 *Warden of the Otay Mesa Detention Facility*, No. 3:25-cv-02488 (S.D. Cal.);
7 *Grosso v. Warden, Otay Mesa Detention Center*, No. 3:26-cv-00396 (S.D. Cal.).
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11 Recent decisions in this District, including decisions by Judge Bermudez
12 Montenegro, reflect the same approach: where a petitioner alleges that prolonged
13 detention has become constitutionally unreasonable, the court may order a prompt
14 individualized custody hearing with appropriate procedural safeguards. See, e.g.,
15 *Xie v. LaRose*, No. 3:25-cv-03649-RBM-BLM (S.D. Cal. Jan. 13, 2026) (granting
16 habeas relief and ordering a § 1226(a) hearing prior to any re-detention); *Alatorre*
17 *Rodriguez v. LaRose*, No. 3:25-cv-02940 (S.D. Cal. Oct. 30, 2025) (granting relief
18 on challenge to detention procedures under § 1226 and due process); *Figueroa v.*
19 *LaRose*, No. 3:25-cv-03801 (S.D. Cal.) (granting in part and ordering a § 1226(a)
20 individualized bond hearing).
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25 This Court has likewise addressed prolonged-detention habeas petitions on
26 the merits and ordered relief where detention became unreasonable. See, e.g.,
27 *Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS (S.D. Cal.) (granting § 2241 relief
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1 and ordering an adequate bond hearing); see also *Singh v. Noem*, No. 26-cv-0265-
2 GPC-BLM (S.D. Cal. Jan. 27, 2026) (granting in part and ordering remedial bond-
3 hearing procedures).
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5 **II. SECTIONS 1252(g) AND 1252(b)(9) DO NOT BAR REVIEW OF**
6 **PROLONGED-DETENTION HABEAS CLAIMS**

7 Respondents contend that 8 U.S.C. §§ 1252(g) and 1252(b)(9) bar review.
8 Those provisions channel review of certain challenges to removal proceedings.
9 They do not preclude habeas review of an as-applied challenge to the lawfulness
10 of continued detention, which is collateral to the decision to commence
11 proceedings or to the merits of removal.
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14 The Supreme Court has explained that §§ 1252(b)(9) and 1252(g) do not
15 sweep in claims that are independent of the merits of removal and cannot be
16 meaningfully reviewed through a petition for review of a removal order. See
17 *Nielsen v. Preap*, 586 U.S. 392, 413–14 (2019) (describing § 1252(b)(9) as not a
18 “zipper clause” for all claims tangentially related to removal); *Jennings v.*
19 *Rodriguez*, 583 U.S. 281, 299–305 (2018) (addressing detention challenges
20 notwithstanding § 1252(b)(9)).
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24 Consistent with that distinction, courts in this District have held that
25 prolonged-detention habeas claims are collateral to removal and therefore are not
26 barred by §§ 1252(g) or 1252(b)(9). See, e.g., *Xie v. LaRose*, No. 3:25-cv-03649-
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1 RBM-BLM (S.D. Cal. Jan. 13, 2026); *Figueroa v. LaRose*, No. 3:25-cv-03801
2 (S.D. Cal.).
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4 As courts have explained, where success on a claim would necessarily
5 require release, the claim sounds in habeas and falls within § 2241. See *Preiser v.*
6 *Rodriguez*, 411 U.S. 475, 484–85 (1973); *Pinson v. Carvajal*, 69 F.4th 1059, 1072
7 (9th Cir. 2023).
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10 **III. PETITIONER DOES NOT SEEK REVIEW OF A BOND
11 DETERMINATION AND DOES NOT IMPLICATE RODRIGUEZ DIAZ**

12 Petitioner is not asking this Court to reweigh an immigration judge’s
13 discretionary custody determination. Nor is he seeking to impose a categorical rule
14 requiring successive bond hearings or burden shifting. Rather, he brings an as-
15 applied due process challenge to the lawfulness of continued detention. *Rodriguez*
16 *Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022), addressed whether additional
17 procedural bond hearings are categorically required; it did not foreclose as-applied
18 challenges to prolonged detention that remain available after *Jennings v. Rodriguez*,
19 583 U.S. 281, 315 (2018).
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23 **IV. EXHAUSTION IS NOT REQUIRED AND WOULD BE FUTILE**

24 In § 2241 cases, exhaustion is prudential rather than jurisdictional and may
25 be excused where administrative remedies are inadequate, futile, or would cause
26 irreparable injury. *Laing v. Ashcroft*, 370 F.3d 994, 1000–01 (9th Cir. 2004). Here,
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1 Petitioner seeks relief from allegedly unconstitutional prolonged detention. The
2 agency cannot grant the constitutional remedy on the timeframe due process
3 requires, and Petitioner's custody appeal has remained pending for months while
4 he remains detained.
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7 Requiring further administrative exhaustion under these circumstances
8 would not provide timely relief from the ongoing restraint on liberty. Where a
9 petitioner's injury is continuing confinement and there is no meaningful timeline
10 for agency action, courts routinely excuse exhaustion. See *Laing*, 370 F.3d at
11 1000-01.
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14 Courts in this District excuse exhaustion in prolonged-detention habeas
15 cases where the agency cannot provide the relief sought in a timely manner. See,
16 e.g., *Singh v. Noem*, No. 26-cv-0265-GPC-BLM (S.D. Cal. Jan. 27, 2026); *Durand*
17 *v. Allen*, No. 3:23-cv-00279-RBM-BGS (S.D. Cal.).
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19 **V. PROLONGED § 1226(a) DETENTION WITHOUT FORESEEABLE**
20 **END VIOLATES DUE PROCESS**

21 Petitioner has been detained for more than twelve months, and the record
22 reflects no reasonably foreseeable end to his custody proceedings. Civil detention
23 must bear a reasonable relation to its regulatory purpose. *Zadvydas v. Davis*, 533
24 U.S. 678, 690 (2001). When detention becomes unreasonably prolonged in relation
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1 to that purpose, continued confinement violates due process. *Foucha v. Louisiana*,
2 504 U.S. 71, 80 (1992).
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4 Whether continued civil detention remains constitutionally permissible is a
5 fact-specific inquiry informed by the private interest at stake, the risk of erroneous
6 deprivation under existing procedures, and the Government's interests. *Mathews v.*
7 *Eldridge*, 424 U.S. 319, 335 (1976). In the prolonged-detention context, courts
8 have required a prompt, meaningful, and individualized custody hearing before a
9 neutral decisionmaker to ensure that continued confinement remains reasonably
10 related to the Government's regulatory objectives.
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14 Applying these principles after *Jennings*, courts in this District have granted
15 as-applied relief under § 1226(a) where detention has become unreasonably
16 prolonged, including by ordering an individualized custody hearing within a set
17 timeframe. See, e.g., *Xie v. LaRose*, No. 3:25-cv-03649-RBM-BLM (S.D. Cal. Jan.
18 13, 2026); *Figueroa v. LaRose*, No. 3:25-cv-03801 (S.D. Cal.).
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21 VI. CONCLUSION

22 For the reasons above, the Court has jurisdiction under 28 U.S.C. § 2241 to
23 consider Petitioner's challenge to continued detention. Sections 1252(g) and
24 1252(b)(9) do not bar this as-applied claim, and prudential exhaustion should be
25 excused. Petitioner respectfully requests that the Court grant the Petition and order
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1 prompt individualized custody proceedings that satisfy due process, or such other
2 relief as the Court deems just and proper.
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4 Respectfully submitted on March 24, 2026

5 /s/ Marcelo Gondim

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CERTIFICATE OF SERVICE

I hereby certify that on March 24, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

Date: March 24, 2026

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