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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

OSCAR MALDONADO-ROMERO,

Civil Case No.: 26-cv-2366-RBM

Petitioner,

**Traverse in Support of Petition for
Writ of Habeas Corpus**

v.

JEREMY CASEY, Warden at Imperial
Regional Detention Center, et al.,

Respondents.

INTRODUCTION

Oscar Maldonado-Romero has been detained pending his immigration proceedings at the Imperial Regional Detention Facility (“IRDF”) for over six months without a bond hearing. ICE arrested Mr. Maldonado in October 2025, after he attended a criminal court hearing in Indio, California. He has been detained under 8 U.S.C. § 1226(c) ever since. An immigration judge (“IJ”) denied Mr. Maldonado’s asylum application on March 20, 2026, and he has appealed that decision to the Board of Immigration Appeals (“BIA”). Mr. Maldonado’s appeal is still pending.

Contrary to Respondents’ arguments, Mr. Maldonado’s six-month detention absent an individualized assessment of the need to detain him is now unreasonably prolonged. “Arbitrary civil detention is not a feature of our

American government.” *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018). This remains true notwithstanding Mr. Maldonado’s criminal history. Many courts have recently held that noncitizens subject to prolonged mandatory detention under § 1226(c) may bring as-applied constitutional challenges to their mandatory detention without a bond hearing. *See Rowe v. Archambeault*, No. 26-cv-1744-GPS-DEB, 2026 WL 879487, *3–*7 (S.D. Cal. Mar. 31, 2026) (ordering a bond hearing for a noncitizen detained under § 1226(c) for close to twelve months); *see, e.g., Rodriguez v. Frink*, ___ F. Supp. 3d ___, 2026 WL 709487, *2–*4 (S.D. Tex. Mar. 13, 2026) (surveying court of appeal decisions approving of such as-applied challenges for § 1226(c) detention, and ordering a bond hearing for a noncitizen detained for five months).

This Court should order Respondents to provide Mr. Maldonado with an individualized bond hearing at which the government bears the burden to prove by clear and convincing evidence that he poses a danger to the community or is a risk of flight, and at which the immigration judge shall consider alternative conditions of release and ability to pay. It should also order Respondents make a complete record of the hearing available to Mr. Maldonado and his counsel. *See, e.g., Sandesh v. LaRose*, No. 26-cv-846-JES-DDL, 2026 WL 622690, *2–*4 (S.D. Cal. Mar. 5, 2026) (ordering this relief in a mandatory detention case).

STATEMENT OF FACTS

Mr. Maldonado is from El Salvador. Exhibit A, Maldonado Decl., ¶ 1. He entered the United States as a minor on March 4, 2006. *Id.* He has lived here for twenty years. *Id.* On July 22, 2024, Mr. Maldonado was arrested in Indio, California. *Id.* at ¶ 2. He pled guilty sometime in October 2024 and was sentenced to probation and community service. *Id.*

Mr. Maldonado was unexpectedly detained by ICE after a criminal court appearance on October 30, 2025. *Id.* at ¶ 3. He has been in immigration detention ever since. *Id.* It has been over six months. *Id.*

1 Mr. Maldonado's asylum application was denied by the IJ on March 20,
2 2026, and he timely filed an appeal to the BIA. *Id.* at ¶ 5. His appeal is still
3 pending. *Id.*

4 **LEGAL ARGUMENT**

5 **I. The Fifth Amendment's Due Process Clause prohibits**
6 **Mr. Maldonado's prolonged immigration detention without a bond**
7 **hearing, contrary to Respondent's arguments.**

8 Mr. Maldonado's six-month detention without a bond hearing violates due
9 process. Respondents' arguments that Mr. Maldonado has not established a due
10 proceed violation under *Demore v. Kim*, 538 U.S. 510 (2003) are without merit.
11 There, the Supreme Court merely held that at least some statutes mandating
12 detention during immigration proceedings do not automatically violate the Due
13 Process Clause. 538 U.S. 510, 513 (2003). *Demore* addressed 8 U.S.C. § 1226(c),
14 which mandates detention without a bond hearing for persons with certain
15 criminal convictions. *Id.* The Court upheld § 1226(c) in a 5-4 opinion based on (1)
16 the government interests justifying the detention of immigrants with certain,
17 aggravated criminal convictions, and (2) the relative brevity of detention in most
18 cases, with the vast majority taking only about five months. *Id.* at 517–31. Justice
19 Kennedy supplied a deciding vote. Importantly, his concurrence left open the
20 possibility that individual immigrants could be “entitled to an individualized
21 determination as to his risk of flight and dangerousness if the continued detention
22 became unreasonable or unjustified.” *Id.* at 532–33.

23 Put differently: *Demore* held only that conviction-based mandatory
24 detention during immigration proceedings does not necessarily violate due
25 process, particularly when the detention has an expected duration of about five
26 months. *Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 209 (3d Cir.
27 2020). Justice Kennedy made clear that *Demore* does not prevent immigrants
28 from arguing that sufficiently prolonged detention violates due process in their
individual cases.

1 **A. The due process clause prohibits prolonged mandatory detention**
2 **without a bond hearing under § 1226(c) as well as § 1225(b).**

3 The Fifth Amendment’s Due Process Clause countermands the
4 government’s statutory authority to detain immigrants without bond hearings.
5 Mr. Maldonado is detained under one such statute, 8 U.S.C. § 1226(c). “Nearly all
6 district courts that have considered the issue agree that prolonged mandatory
7 detention pending removal proceedings, without a bond hearing, will—at some
8 point—violate the right to due process.” *Banda v. McAleenan*, 385 F. Supp. 3d
9 1099, 1111 (W.D. Wash. 2019) (cleaned up) (collecting cases); *see Rowe*, 2026
10 WL 879487 at *3–*5 (ordering a bond hearing as to a noncitizen detained under
11 § 1226(c) due to due process violation in prolonged year-long detention). Indeed,
12 the Ninth Circuit has “grave doubts that any statute that allows for arbitrary
13 prolonged detention without any process is constitutional or that those who
14 founded our democracy precisely to protect against the government’s arbitrary
15 deprivation of liberty would have thought so.” *Rodriguez*, 909 F.3d at 256–57.

16 **B. Courts have reached different conclusions about when**
17 **immigration detention becomes indefinitely prolonged, but**
18 **Mr. Maldonado would prevail under any standard.**

19 Though courts agree that due process mandates a bond hearing when
20 detention grows unreasonably prolonged, they disagree about how to assess
21 whether a particular migrant’s detention has reached that point. *Sanchez-Rivera v.*
22 *Matuszewski*, No. 22-cv-1357-MMA (JLB), 2023 WL 139801, at *5–6 (S.D. Cal.
23 Jan. 9, 2023) (Anello, J.) (surveying the various approaches). Some courts have
24 “conclude[d] . . . that detention becomes prolonged after six months and entitles
25 [a petitioner] to a bond hearing.” *Rodriguez v. Nielsen*, No. 18-cv-04187-TSH,
26 2019 WL 7491555, at *6 (N.D. Cal. Jan. 7, 2019). In that case, Mr. Maldonado
27 would automatically qualify, as he has been detained for over six months. Exhibit
28 A at ¶ 3.

Other courts have adopted various factors tests. *See Sanchez-Rivera*, 2023

1 WL 139801, at *5–6 (surveying different approaches). Courts generally agree that
2 relevant factors include:

- 3 (1) “the total length of detention to date,”
- 4 (2) “the likely duration of future detention,” and
- 5 (3) “the delays in the removal proceedings caused by the petitioner and the
6 government.”

7 *Id.* Mr. Maldonado would prevail under any of these factor tests.

8 First, the “most important factor,” the length of detention at more than six
9 months, favors Mr. Maldonado. *Banda*, 385 F. Supp. 3d at 1118. In assessing this
10 factor, “[i]t is important to bear in mind the context: The detention that is being
11 examined here is the detention of a human being who has never been found to
12 pose a danger to the community or to be likely to flee if released.” *Jamal A. v.*
13 *Whitaker*, 358 F. Supp. 3d 853, 859 (D. Minn. 2019). With that context, courts
14 have granted bond hearings for persons detained for “similar . . . lengths of
15 detention.” *Rowe*, 2026 WL 879487 at *5 (collecting cases finding detention of
16 between seven and ten months unreasonable). This factor therefore favors a bond
17 hearing for Mr. Maldonado.

18 Second, Mr. Maldonado has reason to anticipate significant future
19 detention. The IJ denied his asylum application on March 20, 2026, and
20 Mr. Maldonado timely appealed to the BIA. Exhibit A at ¶¶ 4–5. All told, “[t]his
21 process may take up to two years or longer.” *Banda*, 385 F. Supp. 3d at 1119.
22 Because “Petitioner’s future detention can last several more months or even
23 years[,]” this factor favors Mr. Maldonado. *Abdul Kadir v. Larose*, No. 25-cv-
24 1045-LL-MMP, 2025 WL 2932654, at *5 (S.D. Cal. Oct. 15, 2025).

25 Third, the delay factor is neutral because there is no indication that
26 Mr. Maldonado has caused any unreasonable or unjustified delays.

27 Under any test, then, Mr. Maldonado is entitled to a bond hearing.

28 //

PRAYER FOR RELIEF

For the reasons just given, the Fifth Amendment Due Process Clause prohibits the government from continuing to detain Mr. Maldonado without a bond hearing.

Accordingly, Petitioner respectfully requests that this Court order that:

1. Petitioner receive an individualized bond hearing before a neutral immigration judge within the next 14 days, at which hearing the government shall bear the burden of proof of establishing by clear and convincing evidence that he poses a danger to the community or is a risk of flight, and at which the immigration judge shall consider alternative conditions of release and Petitioner's ability to pay bond;
2. Respondents make a complete record of the hearing available to Petitioner and his counsel; and
3. Any other relief this Court deems just and proper.

Respectfully submitted,

Dated: May 4, 2026

s/ Camille Fenton

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EXHIBIT A

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9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**
11

12 **OSCAR MALDONADO-ROMERO,**

Case No.: 26-cv-2366-RBM

13 Petitioner,

14 v.

Declaration of Oscar Maldonado-Romero

15 **JEREMY CASEY, Warden at Imperial**
16 **Regional Detention Facility, et al.,**

17 Respondents.
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I, Oscar Maldonado-Romero, declare:

1. I was born in El Salvador. I entered the United States as a minor on March 4, 2006, and have lived here ever since.
2. I was arrested on July 22, 2024, for an incident involving domestic violence and animal mistreatment in Indio, California. I pled guilty sometime in October 2024 and was sentenced to 3 years of probation and 174 days of community service.
3. I went to court for that criminal case on October 30, 2025, and was detained by ICE after I finished my court hearing that day. ICE agents were waiting for me outside of the criminal courtroom. I have been in immigration detention ever since. It has been six months and five days.
4. I filed an application for asylum about three months ago and it was denied by the immigration judge ("IJ") on March 20, 2026.
5. I timely filed an appeal of the IJ's decision to the Board of Immigration Appeals ("BIA"). The appeal is still pending.

1 6. I am not trying to delay my case. I would like it to go as fast as possible.

2 7. I do not have money to hire a lawyer.

3
4 I, Camille Fenton, declare under penalty of perjury that I reviewed this declaration
5 with Oscar Maldonado-Romero using a Spanish interpreter, and he confirmed that
6 it was true and correct.

7 Date: April 23, 2026

Signed: /s/ *Camille Fenton*