

HANNAH BASALONE
Va. Bar No. 96875
Federal Defenders of San Diego, Inc.
225 Broadway, Suite 900
San Diego, California 92101-5030
Telephone: (619) 234-8467
Facsimile: (619) 687-2666
Hannah_basalone@fd.org
Attorneys for Mr. Gutierrez-Paniagua

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

DONALDO ANTONIO GUTIERREZ-
PANIAGUA,

Petitioner,

v.

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

CIVIL CASE NO.: 26-cv-2512-GPC-
JLB

**Second Amended¹ Petition
for a
Writ of Habeas Corpus**

¹ Federal Rule of Civil Procedure 15(a)(2) permits a party to amend with leave of court. Fed. R. Civ. Pro. 15(a)(2). This Court ordered Mr. Gutierrez-Paniagua to file a second amended petition on or before June 2, 2026. ECF 16 at 2. Mr. Gutierrez-Paniagua therefore files this amended petition with this Court's leave.

INTRODUCTION

Donaldo Antonio Gutierrez-Paniagua is a citizen of Nicaragua who was released from custody in 2022 so that he could seek asylum in the United States. Even though there was no decision in Mr. Gutierrez-Paniagua's asylum case at the time, he was arrested and re-detained in May of 2025. He has never been convicted of a crime, but ICE still took him into custody without giving him any paperwork or any opportunity to contest his re-detention. He has been detained ever since.

While it is unclear whether the government has formally revoked their decision to release Mr. Gutierrez-Paniagua's, the government's actions are unlawful regardless. If the agency did not revoke this decision, then it violated that parole by detaining him. And if the agency *did* revoke their decision to release him, then it did so in violation of the statute and regulations, which require written notification and a determination that the purposes of the parole have been served, as well as the Constitution, which requires pre-deprivation notice and hearing. Either way, the agency's actions violated the Administrative Procedures Act and the Due Process Clause.

Even if all parole-related arguments are rejected, Mr. Gutierrez-Paniagua has been subjected to prolonged detention in violation of his due process.

This Court should therefore reinstate Mr. Gutierrez-Paniagua's release immediately.

STATEMENT OF FACTS

Mr. Gutierrez-Paniagua fled his native country of Nicaragua because he feared political persecution. Declaration of Donaldo Antonio Gutierrez-Paniagua, Exhibit A at ¶ 1. He does not agree with the government in power in Nicaragua and participated in protests against it. *Id.* at ¶ 1. He was injured during the protests and lost vision in his right eye. *Id.* at ¶ 1. He fears the government will try to kill him if he goes back to Nicaragua. *Id.* at ¶ 1.

1 Because of this fear, Mr. Gutierrez-Paniagua came to the United States on
2 July 7, 2022 to seek asylum. ¶¶ 3–4. He was arrested immediately and detained. *Id.*
3 at ¶ 4. Four days later, ICE released him, and he went to live with his brother, a
4 United States citizen, in Jacksonville, Florida. *Id.* at ¶ 5. While released, Mr.
5 Gutierrez-Paniagua was enrolled in the Intensive Supervision Appearance Program
6 (“ISAP”) program through ICE. *Id.* at ¶ 6. He also had a valid driver’s license, a
7 social security number, and a work permit. *Id.* at ¶ 7.

8 On May 27, 2025, Mr. Gutierrez-Paniagua was in the parking lot of his
9 apartment building when police officers approached and asked to see his ID. *Id.* at
10 ¶ 8. He went to his apartment to get it, and they followed him. *Id.* They then asked
11 if he had a green card; when he said he had a work permit, they arrested him. *Id.*
12 Mr. Gutierrez-Paniagua was first brought to jail in Miami. *Id.* at ¶ 9. He was
13 thereafter released into ICE custody and has been there ever since. Exh. A at ¶ 9
14 When he was detained, officers told him his documents were no longer valid. *Id.* at
15 ¶ 10.

16 Mr. Gutierrez-Paniagua has been in custody since he was detained on May
17 27, 2025. *Id.* at ¶ 11.² He was moved through different detention centers across the
18 southern United States until he was eventually brought to Otay Mesa Detention
19 Center. *Id.*

20 On January 6, 2026, Mr. Gutierrez-Paniagua’s asylum case was denied, and
21 he was ordered removed. He has filed an appeal to the BIA. *Id.* at ¶ 12. That appeal
22 remains pending. *Id.* Mr. Gutierrez-Paniagua has been detained for over twelve
23

24
25 ² As this Court noted in its Order Appointing Counsel, ECF 16, Mr. Gutierrez-
26 Paniagua filed a first habeas petition through counsel on November 21, 2025. *See*
27 *Gutierrez-Paniagua v. Noem et al*, No. 25-cv-3250-GPC-AHG, ECF No. 1. This
28 Court ordered a bond hearing as a result of that petition. *See* *Gutierrez-Paniagua*,
No. 25-cv-3250-GPC-AHG at ECF No. 8. Neither the initial habeas petition nor the
government’s return provided facts for or addressed the parole and release-related
arguments present in this second amended petition.

1 months and will likely remain detained for several more years pending his appeal.
2 *Id.* at ¶ 14.

3 CLAIMS FOR RELIEF

4 **I. ICE failed to comply with its own regulations in revoking Mr.** 5 **Gutierrez-Paniagua's parole under 8 C.F.R. § 212.5, violating the** 6 **Administrative Procedures Act and Due Process.**

7 When Mr. Gutierrez-Paniagua was detained on May 27, 2025, no one told
8 him his parole was revoked, so it is unclear whether a revocation occurred. *See*
9 Exh. A at ¶ 8–10. Either way, the government's actions violate the Administrative
10 Procedures Act and Due Process.

11 Under the Administrative Procedures Act (APA), an agency action may be
12 held unlawful and set aside if it is “arbitrary, capricious, an abuse of discretion, or
13 otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). An action is an
14 abuse of discretion if the agency “entirely failed to consider an important aspect
15 of the problem, offered an explanation for its decision that runs counter to the
16 evidence before the agency, or is so implausible that it could not be ascribed to a
17 difference in view or the product of agency expertise.” *Nat'l Ass'n of Home*
18 *Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle*
19 *Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43
20 (1983)). For a challenged agency action to be upheld, the agency “must explain
21 the evidence which is available, and must offer a rational connection between the
22 facts found and the choice made.” *Motor Vehicle Mfrs.*, 463 U.S. at 52 (1983)
23 (internal quotations omitted) (quoting *Burlington Truck Lines, Inc. v. United*
24 *States*, 371 U.S. 156, 168 (1962)).

25 Here, regardless of whether the agency formally revoked Mr. Gutierrez-
26 Paniagua's parole, it violated the APA. If the agency did *not* revoke his parole,
27 then it inexplicably violated its own decision by illegally detaining Mr. Gutierrez-
28 Paniagua in May 2025. Doing so violated the APA because the agency did not

1 “offer a rational connection between the facts found and the choice made”—i.e.,
2 the fact that Mr. Gutierrez-Paniagua was still on parole, yet the agency decided to
3 detain him. *Motor Vehicle Mfrs*, 463 U.S. at 52. And nothing suggests that there
4 was a “rational” reason for this choice, given that Mr. Gutierrez-Paniagua had
5 filed an asylum application and complied with all the conditions of his parole.
6 This was the epitome of an “arbitrary” and “capricious” act under the APA. 5
7 U.S.C. § 706(2)(A).

8 But assuming the agency *had* revoked his parole, it also violated the APA.
9 Per ICE regulations, a person shall only be “returned to the custody from which
10 he was paroled” when “the purposes of such parole . . . have been served.” 8
11 U.S.C. § 1182(d)(5)(A); *see also* 8 C.F.R. § 212.5(e)(2)(i) (parole may only be
12 terminated “upon accomplishment of the purpose for which parole was
13 authorized”); *Y-Z-L-H*, 2025 WL 1898025, at *12 (same). Alternatively, the
14 regulations permit revocation of parole when “neither humanitarian reasons nor
15 public benefit warrants the [noncitizen’s] continued presence.” 8 C.F.R.
16 § 212.5(e)(2)(i). But under either scenario, parole shall only be “terminated upon
17 written notice to the alien.” 8 C.F.R. § 212.5(e)(2)(i). So, under the statute and the
18 regulations, the agency may only revoke parole and re-detain a noncitizen when
19 the parole’s purpose is served or no humanitarian reasons warrant it *and* the
20 noncitizen receives written notice.

21 None of this occurred here. Because “the purpose[] of [Mr. Gutierrez-
22 Paniagua’s] parole” was to allow him to apply for asylum, that purpose has not
23 yet “been served” because his asylum claim is still pending on appeal. 8 U.S.C. §
24 1182(d)(5)(A). And the humanitarian reasons for parole—to avoid unnecessary
25 detention when an asylum seeker poses no danger or flight risk—remains the
26 same. Put differently, “upon Petitioner’s entry into the United States, Respondents
27 determined that Petitioner was suitable for parole. Respondents have not provided
28 a reasoned explanation or any changed circumstances that would justify their

1 current departure from their prior decision.” *Y-Z-L-H v. Bostock*, 792 F. Supp. 3d
2 1123, 1146 (D. Or. 2025). Under the APA, “[i]t is Respondents’ burden to
3 provide a reasoned explanation for their action,” which they will not be able to do.
4 *Id.*

5 What’s more, Mr. Gutierrez-Paniagua never received any written
6 notification of a revocation under 8 C.F.R. § 212.5(e). If the agency did revoke
7 his parole, this decision violated both the statute and the regulation and was “not
8 in accordance with law” under the APA. 5 U.S.C. § 706(2)(A).

9 Several courts have released parolees on this basis. *See, e.g., Devilmar v.*
10 *LaRose*, No. 3:26-CV-01748-JES-MSB, 2026 WL 1042439, at *2 (S.D. Cal. Apr.
11 17, 2026); *Perez v. Noem*, No. 3:25-CV-03777-CAB-JLB, 2026 WL 102643, at *2
12 (S.D. Cal. Jan. 14, 2026); *Arias v. Larose*, No. 3:25-CV-02595-BTM-MMP, 2025
13 WL 3295385, at *3 (S.D. Cal. Nov. 25, 2025); *Perez v. LaRose*, No. 25-cv-02620-
14 RBM-JLB, 2025 WL 3171742 (S.D. Cal. Nov. 13, 2025); *Salazar v. Casey*, No.
15 25-cv-2784 JLS-VET, 2025 WL 3063629 (S.D. Cal. Nov. 3, 2025); *Noori v.*
16 *LaRose*, No. 25-cv-1824-GPC-MSB, 2025 WL 2800149 (S.D. Cal. Oct. 1, 2025);
17 *Y-Z-L-H v. Bostock*, No. 25-cv-965-SI, 2025 WL 1898025, at *13 (D. Or. July 9,
18 2025).

19 **II. The Due Process Clause requires providing Mr. Gutierrez-Paniagua**
20 **with notice and a chance to be heard before revoking his release.**

21 Additionally, “the revocation of [Mr. Gutierrez-Paniagua’s] parole without
22 justification or consideration of his individualized circumstances violates the Due
23 Process Clause.” *Perez v. LaRose*, No. 3:25-CV-02620-RBM-JLB, 2025 WL
24 3171742, at *4 (S.D. Cal. Nov. 13, 2025). Mr. Gutierrez-Paniagua was “entitled to
25 notice of the reasons for revocation of his parole and a hearing before an
26 immigration judge to determine whether detention is warranted” before ICE
27 revoked his parole. *Id.* at *7.
28

1 “The Fifth Amendment guarantees that ‘[n]o person shall be ... deprived of
2 life, liberty, or property, without due process of law.’” *Salazar*, 2025 WL 3063629,
3 at *3 (quoting U.S. Const. amend. V). “[T]he Due Process Clause applies to all
4 ‘persons’ within the United States, including aliens, whether their presence here is
5 lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693
6 (9th Cir. 2001).

7 “Generally, due process protections depend on the situation and must
8 account for (1) the private interest at issue, (2) the risk of erroneous deprivation of
9 that interest through the procedures used, and (3) the Government's interest.” *Noori*
10 *v. LaRose*, No. 25-cv-1824-GPC-MSB, 2025 WL 2800149 (S.D. Cal. Oct. 1, 2025);
11 (citing *Mathews v. Eldridge*, 424 U.S. 319 (1976)). Weighing those considerations
12 here, Respondents violated the Due Process Clause by revoking parole with no
13 notice or hearing.

14 “First, Petitioner has a private interest in remaining free, which developed
15 over the [months] he resided in the United States.” *Id.* at *10. It does not matter that
16 parole is temporary or discretionary. “For example, *Morrissey v. Brewer*, 408 U.S.
17 471, 482 (1972)—though analyzing the criminal parole context—found that ‘the
18 liberty of a parolee, although indeterminate, includes many of the core values of
19 unqualified liberty and its termination inflicts a grievous loss on the parolee and
20 often others ... [thus it] must be seen within the protection of the [Fifth]
21 Amendment.’” *Id.*

22 “Second, the risk of an erroneous deprivation of such interest is high as
23 Petitioner's parole was revoked without providing [him] a reason for revocation or
24 giving [him] an opportunity to be heard.” *Salazar*, 2025 WL 3063629, at *4. “Civil
25 immigration detention is permissible only to prevent flight or protect against danger
26 to the community.” *Perez*, 2025 WL 3171742, at *5. But here, “[s]ince DHS's initial
27 determination that Petitioner should be paroled because [he] posed no danger to the
28 community and was not a flight risk, there is no evidence that these findings have

1 changed.” *Id.*

2 “Third, the Government’s interest in detaining Petitioner without notice,
3 reasoning, and a hearing is low.” *Salazar*, 2025 WL 3063629, at *5 (cleaned up).
4 “Detention for its own sake, to meet an administrative quota, or because the
5 government has not yet established constitutionally required pre-detention
6 procedures is not a legitimate government interest.” *Pinchi v. Noem*, 792 F. Supp.
7 3d 1025, 1036 (N.D. Cal. 2025).

8 Thus, because Respondents did not provide “proper notice, reasoning, and a
9 pre-deprivation hearing” before revoking parole, Mr. Gutierrez-Paniagua’s re-
10 detention violated the Due Process Clause. *Salazar*, 2025 WL 3063629, at *5.

11 **III. This Court must hold an evidentiary hearing on any disputed facts.**

12 Resolution of a detention-based habeas petition may require an evidentiary
13 hearing. *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009). Mr. Gutierrez-
14 Paniagua hereby requests such a hearing on any material, disputed facts.

15 **IV. Even if this Court finds Mr. Gutierrez-Paniagua’s parole was properly**
16 **revoked, his prolonged detention violates the Fifth Amendment’s Due**
Process Clause

17 Were this Court to reject Mr. Gutierrez-Paniagua’s claims related to his
18 unconstitutional re-detention after being released to fight his immigration case, he
19 still has been unconstitutionally detained for a prolonged period without any
20 process. This Court should “join[] the majority of courts across the country in
21 concluding that [his] unreasonably prolonged detention under 8 U.S.C. § 1225(b)
22 without an individualized bond hearing violates due process.” *Kydyrali v. Wolf*, 499
23 F. Supp. 3d 768, 772 (S.D. Cal. 2020) (Battaglia, J.).

24 **A. The Fifth Amendment’s Due Process Clause prohibits prolonged**
25 **immigration detention without a bond hearing.**

26 When addressing prolonged detention issues, the question becomes whether
27 and when the Fifth Amendment’s Due Process Clause countermands the
28 government’s statutory authority to detain immigrants without bond hearings. Mr.

1 Gutierrez-Paniagua is detained under one such statute, 8 U.S.C. § 1225(b).
2 “Section 1225 applies to ‘applicants for admission’—noncitizens who ‘arrive[] in
3 the United States,’ or are ‘present’ in the United States but have ‘not been
4 admitted.’” *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1111 (W.D. Wash.
5 2019). It “applies to, among others, noncitizens initially determined to be
6 inadmissible because of . . . lack of valid documentation.” *Id.* That includes
7 persons who, like Mr. Gutierrez-Paniagua, seek asylum at or near the border. *See*
8 *id.* at 1109–11 (describing a similar procedural history and finding that petitioner
9 was detained under § 1225(b)). Such immigrants are detained under § 1225(b) not
10 only during their initial proceedings, but also when they appeal to the BIA. *See id.*
11 at 1111 (reaching same conclusion for immigrant with pending BIA appeal).

12 This statutory scheme has left courts to grapple with the limits (if any) of
13 that detention power: Does this statute permit the government to detain
14 immigrants indefinitely, without ever having to prove at a bond hearing that they
15 pose a risk of danger or flight? Three Supreme Court cases are potentially relevant
16 to answering that question.

17 First, in *Zadvydas v. Davis*, the Supreme Court indicated that indefinite
18 immigration detention raises serious due process concerns. 533 U.S. 678 (2001).
19 *Zadvydas* involved a statute authorizing the government to detain immigrants
20 after they are ordered removed. *Id.* at 683. For immigrants who cannot be
21 removed, that statute had the potential to subject them to years, decades, or a
22 lifetime in custody. *See id.* at 690. The Supreme Court held that if the statute
23 “permit[ed] indefinite detention of an alien[,] [it] would raise a serious
24 constitutional problem,” because

25 [t]he Fifth Amendment's Due Process Clause forbids the Government
26 to ‘depriv[e]’ any ‘person ... of ... liberty ... without due process of
27 law.’ Freedom from imprisonment—from government custody,
28 detention, or other forms of physical restraint—lies at the heart of the
liberty that Clause protects. *See Foucha v. Louisiana*, 504 U.S. 71, 80
(1992). And this Court has said that government detention violates

1 that Clause unless the detention is ordered in a *criminal* proceeding
2 with adequate procedural protections, *see United States v. Salerno*,
3 481 U.S. 739, 746 (1987), or, in certain special and ‘narrow’
4 nonpunitive ‘circumstances,’ *Foucha, supra*, at 80, where a special
5 justification, such as harm-threatening mental illness, outweighs the
‘individual’s constitutionally protected interest in avoiding physical
restraint.’ *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997).

6 *Id.* Ultimately, however, the Court declined to decide whether a statute permitting
7 indefinite detention would violate the Due Process Clause. Instead, the Court
8 employed the constitutional avoidance canon to read implicit limits into the
9 statute, requiring release after detention became sufficiently prolonged. *Id.* at 699.

10 Following *Zadvydas*, the Ninth Circuit applied similar reasoning to
11 § 1225(b). *Rodriguez v. Robbins*, 804 F.3d 1060, 1087–89 (9th Cir. 2015).
12 Employing the constitutional avoidance canon, the Ninth Circuit held that
13 § 1225(b) implicitly entitled detained immigrants to bond hearings every six
14 months. *Id.*

15 The Supreme Court overruled that precedent in *Jennings v. Rodriguez*,
16 holding that the statute does not entitle detainees to bond hearings or otherwise
17 impose “any limit on the length of detention.” 583 U.S. 281, 297 (2018). But
18 though *Jennings* held that § 1225(b) imposes no statutory limit on the length of
19 detention, it reserved the question of whether prolonged, mandatory detention
20 without bond hearings violates due process. *Id.* at 312.

21 Finally, the Supreme Court held in *Demore v. Kim* that at least some
22 statutes mandating detention during immigration proceedings do not
23 automatically violate the Due Process Clause. 538 U.S. 510, 513 (2003). *Demore*
24 addressed 8 U.S.C. § 1226(c), which mandates detention without a bond hearing
25 for persons with certain criminal convictions. *Id.* The Court upheld § 1226(c) in a
26 5-4 opinion based on (1) the government interests justifying the detention of
27 immigrants with certain, aggravated criminal convictions, and (2) the relative
28 brevity of detention in most cases, with the vast majority taking only about five

1 months. *Id.* at 517–31. Justice Kennedy supplied a deciding vote. His concurrence
2 left open the possibility that individual immigrants could be “entitled to an
3 individualized determination as to his risk of flight and dangerousness if the
4 continued detention became unreasonable or unjustified.” *Id.* at 532–33.

5 “In the wake of *Jennings*,” *Zadvydas*, and *Demore*, “district courts have
6 grappled with how to address due process challenges to prolonged mandatory
7 detention under § 1225(b).” *Banda*, 385 F. Supp. 3d at 1116. But after a full
8 evaluation, “[n]early all district courts that have considered the issue agree that
9 prolonged mandatory detention pending removal proceedings, without a bond
10 hearing, will—at some point—violate the right to due process.” *Id.* (cleaned up)
11 (collecting cases).

12 These Courts have relied on the due process concerns recognized in
13 *Zadvydas*. See, e.g., *Kydyrali*, 499 F. Supp. 3d at 771; *Banda*, 385 F. Supp. 3d at
14 1113–17; *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654,
15 at *3 (S.D. Cal. Oct. 15, 2025). As the Ninth Circuit put it in *Jennings*’ wake,
16 those considerations raise “grave doubts that any statute that allows for arbitrary
17 prolonged detention without any process is constitutional or that those who
18 founded our democracy precisely to protect against the government’s arbitrary
19 deprivation of liberty would have thought so.” *Rodriguez v. Marin*, 909 F.3d 252,
20 256 (9th Cir. 2018).

21 Neither *Jennings* nor *Demore* undermines that conclusion. *Jennings* held
22 only that the statute itself did not impose any limits on detention. It “did not
23 foreclose as-applied constitutional challenges to detention under” mandatory-
24 detention statutes. *Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 209
25 (3d Cir. 2020). And *Demore* held only that conviction-based mandatory detention
26 during immigration proceedings does not necessarily violate due process,
27 particularly when the detention has an expected duration of about five months. *Id.*
28 at 208–11. But many persons detained under § 1225(b)—like Mr. Gutierrez-

1 Paniagua—do not have criminal convictions. And as Justice Kennedy’s
2 concurrence made clear, *Demore* does not prevent immigrants from arguing that
3 sufficiently prolonged detention violates due process in their individual cases. *See*
4 *id.*³

5 Thus, this Court should hold that sufficiently prolonged detention violates
6 the Due Process Clause, as most courts have. *See, e.g., Gao v. LaRose*, No. 25-
7 CV-2084-RSH-SBC, 2025 WL 2770633, at *3 (S.D. Cal. Sept. 26, 2025); *Abdul*
8 *Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654, at *4 (S.D. Cal.
9 Oct. 15, 2025); *Cong v. Noem*, No. 25-CV-3730-GPC-DEB, 2026 WL 76566, at
10 *3 (S.D. Cal. Jan. 9, 2026); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal.
11 2020) (Battaglia, J.); *Mardian v. Mayorkas*, 25-cv-3467-JLS; *Raeva v. Mayorkas*,
12 25-cv-3175-JO; *Abdul-Samed v. Warden of Golden State Annex Det. Facility*, No.
13 25-cv-98-SAB-HC, 2025 WL 2099343, at *6 (E.D. Cal. July 25, 2025);
14 *Hernandez v. Wofford*, No. 25-cv-986-KES-CDB (HC), 2025 WL 2420390, at *3
15 (E.D. Cal. Aug. 21, 2025); *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1171–72 (W.D.
16 Wash. 2023).

17 **B. Courts have reached different conclusions about when**
18 **immigration detention becomes indefinitely prolonged, but Mr.**
19 **Gutierrez-Paniagua would prevail under any standard, including**
the *Banda* factors.

20 Though courts agree that due process mandates a bond hearing when
21 detention grows unreasonably prolonged, they disagree about how to assess
22 whether a particular migrant’s detention has reached that point. *Sanchez-Rivera v.*
23 *Matuszewski*, No. 22-CV-1357-MMA (JLB), 2023 WL 139801, at *5–6 (S.D.
24 Cal. Jan. 9, 2023) (Anello, J.) (surveying the various approaches). Because it

25 ³ The Supreme Court’s later decision in *Dep’t of Homeland Sec. v. Thuraissigiam*,
26 591 U.S. 103 (2020), is also inapposite, because it addressed only immigrants’ due
27 process rights in deportation proceedings—i.e., the process due when noncitizens
28 seek to stay in the country instead of being removed. *See Lopez-Arevelo v. Ripa*,
No. EP-25-CV-337-KC, 2025 WL 2691828, at *7–9 (W.D. Tex. Sept. 22, 2025). It
does not purport to hold that immigrants have no constitutional right to due process
before the government holds them indefinitely in immigration detention. *Id.*

1 incorporates nearly all the factors, many courts have found it “most appropriate to
2 apply the *Banda* test to Petitioner’s detention here under § 1225(b), as other
3 courts within this district have done in the past.” *Sandesh v. Noem*, 26-cv-846-
4 JES-DDL, Dkt. 13 at 5 (Mar. 5, 2026 S.D. Cal). The *Banda* factors include:

- 5 (1) the total length of detention to date;
- 6 (2) the likely duration of future detention;
- 7 (3) the conditions of detention;
- 8 (4) delays in the removal proceedings caused by the detainee;
- 9 (5) delays in the removal proceedings cause by the government; and
- 10 (6) the likelihood that the removal proceedings will result in a final order
11 of removal.

12 *Banda*, 385 F. Supp. 3d at 1106. Applying these factors here shows that
13 Mr. Gutierrez-Paniagua’s detention has become prolonged.

14 *First*, the “most important factor,” the length of detention, favors Mr.
15 Gutierrez-Paniagua. *Banda*, 385 F. Supp. 3d at 1118. In assessing this factor, “[i]t
16 is important to bear in mind the context: The detention that is being examined
17 here is the detention of a human being who has never been found to pose a danger
18 to the community or to be likely to flee if released.” *Jamal A. v. Whitaker*, 358 F.
19 Supp. 3d 853, 859 (D. Minn. 2019). With that context, courts have granted bond
20 hearings for persons detained between six and eleven months. *See Fofie v.*
21 *Warden Otay Mesa Detention Center*, No. 26-CV-1900-JLS-MSB, ECF 14 at 5
22 (S.D. Cal. May 29, 2026) (granting bond hearing for petitioner detained over six
23 months); *Bendekaca v. Brightman*, No. 26-CV-2934-JLS-BLM, 2026 WL
24 1400584, at 2 (S.D. Cal. May 19, 2026) (collecting cases); *Amando v. United*
25 *States Dep’t of Just.*, No. 25-CV-2687-LL-DDL, 2025 WL 3079052, at *5 (S.D.
26 Cal. Nov. 4, 2025) (collecting cases); *Ashemuke v. ICE Field Off. Dir.*, No. C23-
27 1592-RSL-MLP, 2024 WL 1683797, at *4 (W.D. Wash. Feb. 29, 2024), *report*
28 *and recommendation adopted*, No. C23-1592-RSL, 2024 WL 1676681 (W.D.

1 Wash. Apr. 18, 2024) (“approximately eleven months”); *Brissett v. Decker*, 324
2 F. Supp. 3d 444, 452 (S.D.N.Y. 2018) (“over nine months”); *Perez v. Decker*, No.
3 18-CV-5279 (VEC), 2018 WL 3991497, at *5 (S.D.N.Y. Aug. 20, 2018) (“more
4 than nine months”); *Masood v. Barr*, No. 19-CV-07623-JD, 2020 WL 95633, at
5 *2 (N.D. Cal. Jan. 8, 2020) (“nearly nine months”). Mr. Gutierrez-Paniagua has
6 been detained for over twelve months. Exh. A at ¶ 2. This factor therefore clearly
7 favors Mr. Gutierrez-Paniagua. And even if Mr. Gutierrez-Paniagua’s detention is
8 determined from the date of his last bond hearing, he would still have been
9 detained for over six months—a timeframe where bond hearings have been
10 granted. *See supra*.

11 *Second*, Mr. Gutierrez-Paniagua has reason to anticipate significant future
12 detention, as his case is on appeal to the BIA and will likely go to the Ninth
13 Circuit. *Id.* at ¶ 4. All told, “[t]his process may take up to two years or longer.”
14 *Banda*, 385 F. Supp. 3d at 1119. Because “Petitioner’s future detention can last
15 several more months or even years[,]” this factor favors Mr. Gutierrez-Paniagua.
16 *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654, at *5 (S.D.
17 Cal. Oct. 15, 2025).

18 *Third*, conditions of confinement weigh in favor of him. “Petitioner’s
19 confinement at [Otay Mesa Detention Center] is ‘indistinguishable from penal
20 confinement.’” *Abdul Kadir*, 2025 WL 2932654, at *5 (quoting *Kydyrali*, 499 F.
21 Supp. 3d at 773).

22 *Fourth and fifth*, Mr. Gutierrez-Paniagua has not caused any unreasonable
23 delays in his removal proceedings; thus, this factor is arguably neutral.

24 *Sixth*, regarding the likelihood that the removal proceedings will result in a
25 final order of removal, Mr. Gutierrez-Paniagua has a strong asylum claim and
26 would likely win on appeal. *Id.* at ¶ 4. Accordingly, under the *Banda* factors, Mr.
27 Gutierrez-Paniagua is entitled to release or a bond hearing.

28

V. Prayer for relief

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

1. Order Respondents to immediately release Petitioner from custody, subject to the conditions of his preexisting parole;
2. Order that, prior to any re-detention of Petitioner, Petitioner is entitled to notice of the reasons for revocation of his parole and a hearing before an immigration judge to determine whether detention is warranted. The government should bear the burden of establishing, by clear and convincing evidence, that Petitioner poses a danger to the community or a risk of flight at that hearing;
3. In the alternative—if and only if this Court outright rejects the parole-based arguments—order a bond hearing at which the government bears the burden to prove danger or flight by clear and convincing evidence. At this hearing, the IJ should consider alternative conditions of release that could mitigate any concerns about his flight risk and, separately, if bond is deemed necessary, Petitioner’s ability to pay bond. Finally, this Court should order that Respondents make the audio of the bond hearing available to Petitioner and his counsel upon request; and
4. Order any other relief that the Court deems just and proper.

Respectfully submitted,

Dated: June 2, 2026

s/ Hannah Basalone

Hannah Basalone
Federal Defenders of San Diego, Inc.
Attorneys for Mr. Gutierrez-Paniagua
Email: hannah_basalone@fd.org