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

ANDREI BIKMASOV,
Petitioner,

v.

OTAY MESA DETENTION CENTER,
WARDEN et al,
Respondents.

CIVIL CASE NO.:26-cv-02517-JLS-
DEB

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

¹ Federal Rule of Civil Procedure 15(a)(1)(A) permits a party to “amend its pleading once as a matter of course no later than 21 days after serving it.” Fed. R. Civ. Pro. 15(a)(1)(A) (punctuation altered). It is less than 21 days since service. Mr. Bikmasov therefore files this amended petition as of right.

INTRODUCTION

Mr. Bikmasov has been detained pending his immigration proceedings at the Otay Mesa Detention Center for about 10.7 months without a bond hearing. In June 2025, after being released on a federal bond, ICE arrested him. Mr. Bikmasov has been detained under 8 U.S.C. § 1226(c) ever since. In July of 2025 an immigration judge (“IJ”) denied Mr. Bikmasov’s motion to re-open asylum proceedings. The case is now pending before the Immigration Board of Appeals (“BIA”).

Mr. Bikmasov has now been detained for a prolonged period without an individualized assessment of his flight risk or danger, with no end in sight, in violation of the due process clause as applied to his case. “Arbitrary civil detention is not a feature of our American government.” *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018). As many courts have recently held as to noncitizens subject to prolonged mandatory detention under § 1226(c) as well as § 1225(b), noncitizens 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. Bikmasov 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 Petition 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).

1
2 **STATEMENT OF FACTS**

3 Mr. Bikmasov initially came to the United States in October of 2022. He
4 presented himself at the San Ysidro Port of Entry and requested asylum. Mr.
5 Bikmasov self-deported in October of 2024. (Exhibit A). Nearly six months after
6 his departure, an Immigration Judge (“IJ”) ordered Mr. Bikmasov removed in
7 abstentia. (Exhibit B). Mr. Bikmasov thereafter filed a motion to reopen, which was
8 denied on July 31, 2025. (Exhibit C). On September 2, 2025, Mr. Bikmasov filed
9 an appeal with the Board of Immigration Appeals which remains pending. (Exhibit
10 D).

11 On June 17th, 2025, Mr. Bikmasov re-entered without inspection through the
12 Tecate hills where he was apprehended, questioned and subsequently charged with
13 violating 18 U.S.C. § 1326. (Exhibit E). On June 18, 2025, the Honorable Michael
14 S. Berg set bond in the amount of \$15,000 for Mr. Bikmasov. (25-MJ-03332-MMP,
15 Docket Entry No., 5,6). Upon release from federal custody, Mr. Bikmasov was
16 immediately transferred into ICE custody. On July 22, 2025, at the Government’s
17 request, Mr. Bikmasov’s indictment was dismissed. (Docket Entry No. 16,17). Mr.
18 Bikmasov has been in immigration custody since that time.

19 **LEGAL BACKGROUND**

20 **I. This Court has jurisdiction to consider due process claim of unlawful**
21 **prolonged detention.**

22 The government sometimes argues that this Court’s jurisdiction to consider
23 immigration habeas petitions under 8 U.S.C. § 2241 is taken away by 8 U.S.C.
24 § 1252(g). This argument is “mistaken.” *Hernandez Cruz v. Noem*, No. 25-cv-
25 2566-SB-MAA, 2025 WL 3482630, *1 (C.D. Cal. Dec. 2, 2025).

26 As the Supreme Court and the Ninth Circuit have both recently clarified,
27 courts “should read § 1252(g) narrowly.” *Ibarra-Perez v. United States*, 154 F.4th
28 989, 991 (9th Cir. 2025) (citing *Dep’t of Homeland Sec. v. Regents of the Univ. of*

1 *Cal.*, 591 U.S. 1, 19 (2020)). That section’s jurisdiction-stripping provisions are
2 limited to “three discrete actions”: the “decision or action to *commence*
3 proceedings, *adjudicate* cases, or *execute* removal orders.” *Reno v. Am.-Arab Anti-*
4 *Discrimination Comm.*, 525 U.S. 471, 482 (1999) (quoting 8 U.S.C. § 1252(g)).
5 They do not strip jurisdiction and “sweep in any claim that can technically be said
6 to ‘arise from’ the three listed actions of the Attorney General. Instead, [the Court]
7 read[s] the language to refer to just those three specific actions themselves.”
8 *Jennings v. Rodriguez*, 538 U.S. 281, 294 (2018).

9 As a result, this Court still has jurisdiction over Mr. Bikmasov’s claim. Like
10 many other habeas petitioners in immigration detention, Mr. Bikmasov “is seeking
11 to review the legality of his detention, arguing that the length of time he has been
12 detained here violates due process—rather than challenging the decision to
13 commence proceedings, the adjudication of his removal case, or an action to
14 execute his removal order.” *Gao v. LaRose*, 809 F. Supp. 3d.1090, 2025 WL
15 2770633, *2 (S.D. Cal. 2025) (Huie, J.) (finding jurisdiction over § 2241 habeas
16 petition in a prolonged detention case for an arriving noncitizen and ordering an
17 individualized bond hearing). This Court’s jurisdiction is “not barred by Section
18 1252(g).” *Id.*; accord, e.g., *Khorsheed v. LaRose*, No. 25-cv-3346-BTM-KSC, 2025
19 WL 3638141, *1 (S.D. Cal. Dec. 15, 2025) (same).

20 **II. Claim: The Fifth Amendment’s Due Process Clause prohibits Mr.**
21 **Bikmasov’s prolonged immigration detention without a bond hearing.**

22 Mr. Bikmasov’s ten-plus-month detention without a bond hearing violates
23 due process.

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

26 The Fifth Amendment’s Due Process Clause countermands the government’s
27 statutory authority to detain immigrants without bond hearings.

28 Mr. Bikmasov is detained under one such statute, 8 U.S.C. § 1226(c), which
requires mandatory detention without any individualized bond hearing for anyone

1 who has been previously removed.

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

12 **B. Courts have reached different conclusions about when**
13 **immigration detention becomes indefinitely prolonged, but Mr.**
14 **Bikmasov would prevail under any standard.**

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

24 Other courts have adopted various factors tests. *See Sanchez-Rivera*, 2023
25 WL 139801, at *5–6 (surveying different approaches). Courts generally agree that
26 relevant factors include:

- 26 (1) “the total length of detention to date,”
- 27 (2) “the likely duration of future detention,” and
- 28 (3) “the delays in the removal proceedings caused by the petitioner and the

1 government.”

2 *Id.* Some courts also consider:

3 (4) “the conditions of detention,” and

4 (5) “the likelihood that the removal proceedings will result in a different
5 final order.”

6 *Id.* Other courts have rejected the fourth and fifth factors, holding that they are “not
7 particularly suited to assisting the Court in determining whether detention has
8 become unreasonable and due process requires a bond hearing.” *Lopez v. Garland*,
9 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022); accord *Sanchez-Rivera*, 2023 WL
10 139801, at *5–6.

11 Mr. Bikmasov would prevail under any of these factors tests.

12 First, the “most important factor,” the length of detention at ten-plus months,
13 favors Mr. Bikmasov. *Banda*, 385 F. Supp. 3d at 1118. In assessing this factor, “[i]t
14 is important to bear in mind the context: The detention that is being examined here
15 is the detention of a human being who has never been found to pose a danger to the
16 community or to be likely to flee if released.” *Jamal A. v. Whitaker*, 358 F. Supp.
17 3d 853, 859 (D. Minn. 2019). With that context, courts have granted bond hearings
18 for persons detained for “similar or shorter lengths of detention.” *Rowe*, 2026 WL
19 879487 at *5 (collecting cases finding detention of between seven and ten months
20 unreasonable). Mr. Bikmasov has been detained for ten-plus months. This factor
21 therefore clearly favors a bond hearing.

22 Second, Mr. Bikmasov has reason to anticipate significant future detention.
23 He submitted his appeal to the BIA in September of 2025. His appeal remains
24 pending. *Id.* Even if the BIA denies his claims, he plans to appeal to the Ninth
25 Circuit. All told, “[t]his process may take up to two years or longer.” *Banda*, 385
26 F. Supp. 3d at 1119. Because “Petitioner’s future detention can last several more
27 months or even years[,]” this factor favors Mr. Bikmasov. *Abdul Kadir v. Larose*,
28 No. 25CV1045-LL-MMP, 2025 WL 2932654, at *5 (S.D. Cal. Oct. 15, 2025).

1 Third, the delay factor is at most neutral. Mr. Bikmasov does not have the
2 ability to control the speed of his immigration proceedings.

3 Fourth, Mr. Bikmasov's conditions of confinement weigh in favor of a bond
4 hearing. "Courts have recognized that the conditions at the Otay Mesa Detention
5 Center are 'indistinguishable from penal confinement.'" *Rowe*, 2026 WL 879487
6 at *6 (collecting cases). Those conditions are challenging for Mr. Bikmasov. Mr.
7 Bikmasov suffers from asthma and other medical conditions related to the
8 respiratory system. These conditions have worsened during this lengthy period of
9 incarceration. (Exhibit E).

10 Fifth, there is a significant likelihood that Mr. Bikmasov will prevail on his
11 appellate claim and his asylum case will be re-opened. Under any test, then, Mr.
12 Bikmasov is entitled to a bond hearing.

13 **PRAYER FOR RELIEF**

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

17 Accordingly, Petitioner respectfully requests that this Court order that:

- 18 1. Petitioner receive an individualized bond hearing before a neutral
19 immigration judge within the next 14 days, at which hearing the
20 government shall bear the burden of proof of establishing by clear
21 and convincing evidence that he poses a danger to the community or
22 is a risk of flight, and at which the immigration judge shall consider
23 alternative conditions of release and Petitioner's ability to pay bond;
 - 24 2. Respondents make a complete record of the hearing available to
25 Petitioner and his counsel; and
 - 26 3. Any other relief this Court deems just and proper.
- 27
28

Respectfully submitted,

Dated: May 15, 2026

s/ Fernanda Ezquerro

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