

1 Christopher Paul Kailani Medeiros (Cal. 319418)
2 MEDEIROS LAW
3 P.O. Box #38
4 Lemon Grove, CA 91946
5 (619) 354-4227
6 kai@medeiros.law

7 Attorney for Petitioner Edwin Gómez Infante

8
9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 **Edwin Gómez Infante,**
12 Petitioner,

13 v.

14 **Todd Blanche**, Acting United States
15 Attorney General; **Markwayne Mullin**,
16 United States Secretary of Homeland
17 Security; **Todd M. Lyons**, Acting Director
18 of Immigration and Customs Enforcement;
19 **Patrick Divver**, San Diego Field Office
20 Director, Immigration and Customs
21 Enforcement; **Christopher J. LaRose**,
22 Senior Warden, Otay Mesa Detention
Center

23 Respondents.
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Case No. 26-cv-2554-LL-MSB

Agency No. 

Amended Petition for a Writ of Habeas
Corpus

INTRODUCTION

1. Petitioner Edwin Gómez Infante petitions this Court to remedy his illegal detention at the Otay Mesa Detention Center (OMDC) in San Diego.

2. Mr. Gómez has been detained at OMDC pending removal proceedings since late November 2025. In the ensuing six-plus months, no neutral adjudicator has considered whether his detention is necessary.

3. Because the Due Process Clause does not permit Mr. Gómez's continued unreviewed detention, the Court should grant his petition for a writ of habeas corpus and order him released from detention if Respondents do not provide him within seven days with a bond hearing before an Immigration Judge at which the Department of Homeland Security bears the burden of justifying his continued detention by clear and convincing evidence.

PARTIES

4. Petitioner Edwin Gómez Infante is a native and citizen of Colombia. He is seeking asylum and related humanitarian relief amid removal proceedings in the Otay Mesa Immigration Court. He has been detained at OMDC since late November 2025.

5. Respondent Todd Blanche is the Acting United States Attorney General. He is responsible for implementing and enforcing the immigration laws of the United States. Some of this authority is delegated to the Executive Office for Immigration Review, the agency that houses the immigration courts and BIA. *See* 8 C.F.R. § 1003.0(a). Acting Attorney General Blanche is a legal custodian of Mr. Gómez. He is sued in his official capacity.

6. Respondent Markwayne Mullin is the United States Secretary of Homeland Security. He is responsible for enforcing the immigration laws of the United States, including those concerning the detention of noncitizens. Mr. Mullin is a legal custodian of Mr. Gómez. He is sued in his official capacity.

7. Respondent Todd M. Lyons is the Acting Director of United States Immigration and Customs Enforcement. The Department of Homeland Security is ICE's

1 parent agency. Mr. Lyons is responsible for ICE's policies, practices, and procedures,
2 including those pertaining to the detention of noncitizens. Mr. Lyons is a legal custodian
3 of Mr. Gómez. He is sued in his official capacity.

4 8. Respondent Patrick Divver is the Field Director of ICE's San Diego Field
5 Office. The San Diego Field Office is responsible for ICE's detention operations at
6 OMD. Field Director Divver is a legal custodian of Mr. Gómez. He is sued in his
7 official capacity.

8 9. Respondent Christopher J. LaRose is the senior warden of OMD. He is
9 employed by the private corporation CoreCivic. Warden LaRose is Mr. Gómez's
10 immediate physical custodian. He is sued in his official capacity.

11 JURISDICTION & VENUE

12 10. 28 U.S.C. §§ 1331 and 2241, and Article I, section nine, clause two of the
13 United States Constitution give the Court jurisdiction over this petition. The Court may
14 grant relief pursuant to 28 U.S.C. §§ 2201, 2241, and 1651.

15 11. Venue is proper in the Southern District of California because Mr. Gómez is
16 detained here. See 28 U.S.C. §§ 1391(e), 2241.

17 BACKGROUND

18 12. Mr. Gómez is a native and citizen of Colombia. Ex. A at 2. He has fled that
19 country and sought protection in the United States following persecution by guerrillas
20 due to his prior service in the Colombia armed forces and national police. *Id.* at 6.

21 13. On June 21, 2023, DHS brought removal proceedings against Mr. Gómez by
22 filing a Notice to Appear in immigration court. Ex. B; *see* 8 U.S.C. § 1229(a). Mr.
23 Gómez filed a pro se Form I-589 in his removal proceedings, thereby applying for
24 asylum, *see* 8 U.S.C. § 1158, statutory withholding of removal, *see id.* § 1231(b)(3), and
25 protection under the United Nations Convention Against Torture, *see* 8 C.F.R. §§
26 1208.16-.17. Declaration of Christopher Medeiros in Support of Amended Petition for a
27 Writ of Habeas Corpus, ¶ 3.

14. On November 26, 2025, DHS took custody of Mr. Gómez. Ex. C. Shortly thereafter, DHS transferred him to OMDC. Consequently, venue in his removal proceedings transferred to the Otay Mesa Immigration Court.

15. Now represented by undersigned counsel, Mr. Gómez filed an amended Form I-589. Ex. A. DHS then moved to pretermite that relief application on the grounds that Mr. Gómez is subject to the United States’ “asylum cooperative agreements” with Ecuador and Honduras. Ex. D at 1; *see* Agreement Between the Government of the United States of America and the Government of the Republic of Ecuador Relating to the Transfer of Third-Country Nationals to Ecuador, 90 Fed. Reg. 51,376 (Nov. 17, 2025); Agreement Between the Government of the United States of America and the Government of the Republic of Honduras for Cooperation in the Examination of Protection Requests, 90 Fed. Reg. 30,076 (July 8, 2025). According to DHS, those agreements—whereby the United States may transfer asylum seekers from third countries to Ecuador and Honduras to seek asylum there instead of in the United States—satisfy the “safe-third-country” exception to the asylum statute. *See* 8 U.S.C. § 1158(a)(2)(A) (barring from applying for asylum any noncitizen whom the Attorney General determines “may be removed, pursuant to a bilateral or multilateral agreement, to a country” where they do not face persecution and “would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection”).

16. Mr. Gómez opposed that motion. *See* Ex. C. But, on April 30, 2026, an immigration judge granted the motion and ordered him removed to Honduras and Ecuador. *Id.*

17. Mr. Gómez has appealed the IJ's order to the Board of Immigration Appeals. Medeiros Dec'l, ¶ 7. The BIA has not yet docketed his appeal. *Id.*

EXHAUSTION

18. Under some circumstances, noncitizens challenging their detention via habeas must first exhaust administrative remedies. *See Romero-Salas v. Barr*, No. 20cv0073-BAS (KSC), 2020 WL 919135, at *3 (S.D. Cal. Feb. 26, 2020) (describing the

1 administrative-exhaustion framework appurtenant to habeas petitions by detained
 2 noncitizens). That is not so here. Mr. Gómez’s petition asserts one claim—that his
 3 continued unreviewed detention violates due process. And that claim cannot be advanced
 4 before the agency, which is not empowered to adjudicate constitutional claims. *See*
 5 *Garcia-Ramirez v. Gonzales*, 423 F.3d 935, 938 (9th Cir. 2005) (per curiam); *Padilla-*
 6 *Padilla v. Gonzales*, 463 F.3d 972, 977 (9th Cir. 2006). Accordingly, there is no available
 7 administrative remedy that Mr. Gómez could first exhaust before seeking relief from this
 8 court.

9 19. Alternatively, the Court should waive the prudential exhaustion requirement
 10 because attempting to exhaust before the agency the claim in this petition “would be a
 11 futile gesture.” *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (quoting *SEC v.*
 12 *G.C. George Sec., Inc.*, 637 F.2d 685, 688 (9th Cir. 1981)). This is because the BIA’s
 13 precedential decision in *Matter of Q. Li*, 29 I&N Dec. 66, 69 (BIA 2025) holds that
 14 noncitizens who, like Mr. Gómez, are detained under 8 U.S.C. § 1225(b) are not entitled
 15 to a bond hearing in immigration court. *See Amado v. DOJ*, No. 25cv2687-LL(DDL),
 16 2025 WL 3079052, at *3 (S.D. Cal. Nov. 4, 2025).

17 CAUSE OF ACTION

18 Violation of Due Process

19 20. The Due Process Clause of the United States Constitution provides that
 20 “[n]o person shall . . . be deprived of . . . liberty . . . without due process of law.”

21 21. While the Immigration and Nationality Act does not provide for bond
 22 hearings for noncitizens, like Mr. Gómez, who are detained pursuant to 8 U.S.C. §
 23 1225(b), the Fifth Amendment’s Due Process Clause does not permit their indefinite,
 24 unreviewed detention. *See Campos v. LaRose*, No. 26-cv-29-RSH-JLB, 2026 WL
 25 146630, at *1-2 (S.D. Cal. Jan. 30, 2026) (collecting cases).

26 22. Courts querying whether a given noncitizen’s unreviewed detention under 8
 27 U.S.C. § 1225(b) has run afoul of due process consider the following factors:
 28

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

23. *Id.* at *6; (citing *Kydrali v. Wolf*, 499 F.supp. 3d 768, 773 (S.D. Cal. 2020); *Banda v. McAleenan*, 385 F.supp. 3d 1099, 1106 (W.D. Wash. 2019)).

24. As concerns factor one—“the most important factor,” *Kydrali*, 499 F.supp. 3d at 774 (quoting *Banda*, 385 F.supp. 3d at 1118)—Mr. Gómez has been detained, as of the time of this petition’s filing, for approximately five and one-half months. As the Court takes the time necessary to resolve his petition, that time will, of course, continue to accumulate. This factor thus favors Mr. Gómez. *See, e.g., Lara v. Bondi*, No. 26-cv-1125-RSH-BJW, ECF No. 5 at 4 (S.D. Cal. Mar. 9, 2026) (concluding that six months of un-reviewed detention had “become unreasonable and violate[d] due process”); *Tambu v. Bondi*, No. 26-cv-01481-JLS-DDL, ECF No. 6 at 3 (S.D. Cal. Mar. 19, 2026) (“Petitioner’s length of detention, over six months, without a bond hearing weighs in Petitioner’s favor.”); *see also Akbar v. LaRose*, No. 25-cv-3510-RSH-VET, 2026 WL 36079, at *3 (S.D. Cal. Jan. 6, 2026) (“Nor does the fact that courts have granted habeas relief in some other cases involving longer periods of detention indicate that Petitioner is not also entitled to such relief[.]”).

25. As concerns factor two, Mr. Gómez faces likely extensive further detention. Mr. Gómez has appealed his order of removal to Ecuador and Honduras. If the BIA affirms that order, he will then be entitled to file a petition for review in the Ninth Circuit. *See* 8 U.S.C. § 1252(a)(1). And under Ninth Circuit General Order 6.4(c), upon filing such a petition for review, Mr. Gómez will be entitled to an administrative stay of removal, which may be extended by motion. *See also Rojas-Espinoza v. Bondi*, 160 F.4th 991, 1000 (9th Cir. 2025) (noting that it is commonplace for Ninth Circuit panels to wait to “decide any still-pending stay motion at the same time that the merits are decided”). As

1 the Court in *Banda* recognized, appealing an adverse IJ decision to the BIA and then
 2 seeking judicial review “may take up to two years or longer.” 385 F.Supp. 3d at 1119.
 3 This factor therefore favors Mr. Gómez as well. *See also* *Sufiarov v. Warden*, No.
 4 25cv3265, 2026 WL 26079, at *5 (S.D. Cal. Jan. 5, 2026); *Akbar*, 2026 WL 36079, at *7.

5 26. Factor three likewise strongly favors Mr. Gómez. “In considering the
 6 conditions of detention, ‘[t]he more that the conditions under which the [noncitizen] is
 7 being held resemble penal confinement, the stronger his argument that he is entitled to a
 8 bond hearing.’” *Amado*, 2025 WL 3079052, at *6 (quoting *Banda*, 385 F.supp. 3d at
 9 1119). And courts in this district have already, correctly, found that detention at OMD C
 10 is “indistinguishable from penal confinement.” *Amado*, 2025 WL 3079052, at *6 (quoting
 11 *Kydrali*, 499 F.supp. 3d at 773); *see also* Gustavo Solis, *Overcrowded conditions plague*
 12 *Otay Mesa and other immigrant detention facilities*, KPBS (July 28, 2025),
 13 <https://tinyurl.com/cjlm535n> (describing OMD C as “beset by overcrowding” and
 14 highlighting reports of “detainees sleeping on the floor” and “deferred medical care
 15 resulting in hospitalizations”); Cal. Dep’t of Just., *Immigration Detention in California: A*
 16 *Comprehensive Review with a Focus on Mental Health* 133 (Apr. 2025),
 17 <https://tinyurl.com/3z4mpe8r> (highlighting deficiencies in the provision of healthcare and
 18 mental-health care at OMD C); DHS, Office of the Inspector Gen., *Violations of ICE*
 19 *Detention Standards at Otay Mesa Detention Center* 3 (Sept. 14, 2021),
 20 <https://tinyurl.com/2p7vafwh> (finding numerous “violations of ICE detention standards
 21 that compromised the health, safety, and rights of detainees”). This factor therefore
 22 similarly favors Mr. Gómez.

23 27. With respect to factor four, Mr. Gómez does not bear blame for his
 24 continued detention, as he has submitted his relief application and prepared his case with
 25 admirable expediency, given the life-and-death stakes. *See Markosian v. Bondi*, No. 25-
 26 cv-3494-JES-BLM, 2026 WL 25850, at *3 (S.D. Cal. Jan. 5, 2026) (declining to fault the
 27 petitioner for having requested a three-month continuance because “a petitioner’s pursuit
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of defenses to removal should not be held against a determination that they are entitled to due process”); *Kydrali*, 499 F.supp. 3d at 773.

28. As concerns factor five, Mr. Gómez concedes that the government has not unreasonably contributed to any delays in his removal proceedings.

29. Lastly, factor six favors Mr. Gómez as well, because his removal proceedings are likely to end favorably for him. To begin, he is likely to obtain vacatur of his order of removal to Ecuador and Honduras. While he cannot press statutory or constitutional arguments before the agency, once his order reaches the Ninth Circuit, Mr. Gómez is likely to prevail on his claims that 8 C.F.R. § 1240.11(h)—the regulation purporting to implement the asylum statute’s safe-third-country bar—is ultra vires and violates due process.¹ And once that order is vacated and his case returned to immigration

¹ The relevant statutory provision excepts a noncitizen from asylum eligibility

if the Attorney General determines that the alien may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the alien’s nationality or, in the case of an alien having no nationality, the country of the alien’s last habitual residence) in which the alien’s life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection, unless the Attorney General finds that it is in the public interest for the alien to receive asylum in the United States.

8 U.S.C. § 1158(a)(2)(A). The regulations allow noncitizens whom DHS alleges to be subject to that bar to litigate whether they face probable persecution or torture in the third country in question. 8 C.F.R. § 1240.11(h)(2). But the BIA has interpreted them not to permit the noncitizens to contest whether they will, in fact, “have access to a full and fair procedure for determining a claim to asylum,” 8 U.S.C. § 1158(a)(2)(A), in that country. *Matter of C-I-G-M-*, 29 I&N Dec. 291, 294 (BIA 2025). Because the statute provides no basis for depriving noncitizens from the opportunity to litigate that question, the regulations likely run afoul of it. *See E.E. ex. Re. Hutchinson Escobedo v. Norris Sch. Dist.*, 4 F.4th 866, 872 (9th Cir. 2021).

Moreover, as concerns procedural due process, it is difficult to envision a more straightforward application of the *Mathews v. Eldridge* factors, *see* 424 U.S. 319, 334-35 (1976), than to a regulatory framework that does not permit asylum seekers to contest the adequacy (or existence) of the refugee-protection regime in the country to which they will be shipped off to seek asylum.

1 court, Mr. Gómez will be able to assert his meritorious asylum claim arising from threats
2 to his life due to his past police and military service. *See* Ex. C at 6.

3 30. At bottom, factor six doesn't require litigation in miniature of a petitioner's
4 asylum claim, but rather focuses on "whether the noncitizen has asserted any defenses to
5 removal." *Abdul Kadir v. Larose*, No. 25cv1045-LL-MMP, 2025 WL 2932654, at *5
6 (S.D. Cal. Oct. 15, 2025) (quoting *Banda*, 385 F.supp. 3d at 1120). Because Mr. Gómez
7 has plainly done so, this factor favors him. *See also Markosian*, 2026 WL 25850, at *4
8 ("The Court does not have enough information to determine the likelihood that [the
9 petitioner's] proceedings will result in removal, but notes that it is possible she will be
10 granted withholding on appeal based on her prior credible fear determination."); *Kydrali*,
11 499 F.supp. 3d at 774 (granting habeas relief even though a Ninth Circuit panel had
12 already upheld petitioner's removal order and petitioner was seeking en banc review);
13 *Tambu*, No. 26-cv-01481-JLS-DDL, ECF No. 6 at 3 (granting habeas relief to noncitizen
14 with pending BIA appeal of order of removal to third country pursuant to asylum
15 cooperative agreement).

16 31. Because five of the six relevant factors favor Mr. Gómez, the Court should
17 hold that his continued unreviewed detention does not comport with due process.
18 Accordingly, it should grant his petition for a writ of habeas corpus and order him
19 released from detention if Respondents do not provide him with a bond hearing within
20 seven days of the Court's order.

21 32. As for the procedures attendant to that bond hearing, the overwhelming
22 consensus is that—at prolonged-detention bond hearings of this sort—the government
23 should bear the burden of justifying, by clear and convincing evidence, the noncitizen's
24 continued detention. *See, e.g., Sadeqi v. LaRose*, 809 F.Supp. 3d 1090, 1095 (S.D. Cal.
25 2025); *Kydrali*, 499 F.supp. 3d at 774. There is no reason for this court to depart from
26 that consensus.
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PRAYER FOR RELIEF

WHEREFORE, Mr. Gómez prays that the Court:

- a. Assume jurisdiction over this case;
- b. Order that Respondents refrain from transferring him outside of the Southern District of California while his petition remains pending;
- c. Declare that his detention is unlawful;
- d. Issue a writ of habeas corpus ordering Respondents to release him from custody if he is not provided within seven days of the Court's order with a bond hearing before an IJ at which DHS bears the burden of justifying his continued detention by clear and convincing evidence.
- e. Award his counsel attorney's fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412, and on any other basis justified under law; and
- f. Grant all other relief that the Court deems just and proper.

Respectfully submitted,

Dated: May 7, 2026

s/ Christopher Paul Kailani Medeiros

Christopher Paul Kailani Medeiros
Attorney for Edwin Gómez Infante