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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Edwin Gómez Infante,
Petitioner,

v.

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

Respondents.

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

Agency No. 

Petitioner's Traverse

INTRODUCTION

Due process does not permit Respondents to continue to detain Petitioner Edwin Gómez Infante without a neutral arbiter considering whether that detention is necessary. Respondents' protestations to the contrary are unavailing. The Court has jurisdiction to order Mr. Gómez released if he does not receive a bond hearing at which DHS bears the burden of justifying his continued detention by clear and convincing evidence. And the relevant factors show that the Court should so order. The Court should thus grant Mr. Gómez's petition.

FACTUAL DEVELOPMENTS POST-DATING MR. GÓMEZ'S AMENDED PETITION

I. Mr. Gómez's appeal to the BIA

Respondents' correctly note that, at the time of their return's filing Mr. Gómez had attempted to file with the Board of Immigration Appeals a notice of appeal of his removal order, but that the BIA had rejected his filing and thus had not docketed his appeal. *See* ECF No. 8 at 2. Mr. Gómez now provides some additional context and information concerning more-recent developments.

An IJ ordered Mr. Gómez removed on April 30, 2026. He thus has until May 30 to appeal that order to the BIA, lest it become administratively final. *See* 8 C.F.R. § 1003.38(b) (2025).¹ Mr. Gómez filed a notice of appeal on May 7, along with a request that the BIA waive, in light of his indigent status, the \$1,030 filing fee. Declaration of Christopher Medeiros in Support of Petitioner's Traverse, ¶ 3; Ex. A; *see* 8 C.F.R. § 1003.8; *Types of Appeals, Motions, and Required Fees*, EOIR, <https://www.justice.gov/eoir/types-appeals-motions-and-required-fees> (last visited May 21, 2026). The BIA rejected that filing on May 12, 2026, asserting that Mr. Gómez's form EOIR-26A

¹ The Executive Office for Immigration Review has sought, through an interim final rule, to shorten this deadline from 30 to ten days, but that provision of the IFR has been set aside by the District Court for the District of Columbia. *Amica Ctr. For Immigrant Rts. v. EOIR*, 2026 WL 662494, at *8, *34 (D.D.C. 2026), *appeal filed*, No. 26-5156 (D.C. Cir. May 11, 2026).

1 (“Request for Fee Waiver”) “reflects respondent/applicant has sufficient funds to pay
2 required fee.” Ex. B.

3 In response, Mr. Gómez refiled his notice of appeal and Form EOIR-26A, along
4 with a cover letter explaining his belief that the BIA rejected his prior filing in error, as
5 his fee-waiver request showed that he has been detained since November 2025 and has no
6 income or access to funds. Medeiros Decl., ¶ 5; Ex. C. The BIA rejected that filing on
7 May 18, 2026, this time stating “Attorney filed an E-26A with non-pro Bono
8 representation.” Ex. D. In response to that rejection Mr. Gómez has refiled once more his
9 notice of appeal and Form EOIR-26A, this time accompanied by a cover letter explaining
10 that Mr. Gómez’s counsel had been assigned to represent him under the auspices of the
11 County of San Diego’s Immigrant Legal Defense Fund (ILDF), and that Mr. Gómez was
12 not paying for his representation and was, in fact, truly indigent.² Medeiros Decl., ¶ 7;
13 Ex. E. If the BIA has not accepted Mr. Gómez’s notice of appeal by May 29, counsel for
14 Mr. Gómez will pay the filing fee before the deadline for his notice of appeal passes.
15 Medeiros Decl., ¶ 10.

16 II. Conditions at OMDC

17 After Mr. Gómez amended his petition, the California Department of Justice
18 released its fifth report on conditions of confinement in immigration-detention centers in
19 the state. *Immigration Detention in California: A Review of Conditions of Confinement*,
20 Cal. Dep’t of Jus. (May 2026), [https://oag.ca.gov/system/files/media/immigration-](https://oag.ca.gov/system/files/media/immigration-detention-2026.pdf)
21 [detention-2026.pdf](https://oag.ca.gov/system/files/media/immigration-detention-2026.pdf) (last visited May 21, 2026); see *United States v. California*, 921 F.3d
22 865, 875-76, 886 (9th Cir. 2019) (upholding AB 103’s requirement that the Attorney
23 General of California inspect and report on conditions in immigration-detention centers
24 _____

25 ² As he explains in his declaration, in cases where counsel for Mr. Gómez is being compensated for
26 representation by the ILDF, it is his practice to check the box on Form EOIR-27 indicating that he is not
27 providing pro bono representation. Medeiros Decl., ¶ 8. Counsel for Mr. Gómez submits that this is the
28 most-accurate representation under the circumstances, as—while his client is not paying his fees—he is
receiving compensation in exchange for his legal services. See *Pro Bono*, Black’s Law Dictionary (12th
ed. 2024) (“Uncompensated[.]”).

in the state). Recalling that conditions of confinement are one of the factors that courts hearing prolonged-detention habeas petitions are to consider, *see Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1106 (W.D. Wash. 2019), this report provides further reason still to grant Mr. Gómez’s petition, as it illustrates the poor conditions in which he is being held at OMDC. In particular, the report finds that: (1) overcrowding at OMDC has reached such critical levels that some detainees must sleep on “boats” on the floor due to the unavailability of bedspace; (2) overcrowding has also compromised the facility’s cleanliness and in some housing units, the number of detainees per toilet exceeds that permissible under ICE’s own published standards; (3) OMDC “is the only facility in California with a policy and practice to strip search detainees after each non-legal contact visit”; (4) according to detainee reports, “the quantity and quality of food is inadequate” at OMDC, such that detainees must “supplement meals with food purchased from the commissary”; and (5) OMDC’s “medical recordkeeping practices limit the facility’s ability to provide quality, consistent medical care.” *Immigration Detention in California*, *supra*, at 117-18. These considerations further emphasize that due process does not tolerate Mr. Gómez’s continued unreviewed detention at OMDC.

ARGUMENT

Respondents provide no reason for denying Mr. Gómez’s petition.

First, Respondents press that the Court lacks jurisdiction under 8 U.S.C. § 1252(g). ECF No. 8 at 4. That statutory provision provides that “[n]o court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.” Because that language says nothing about custody, it is not surprising that courts have roundly rejected the notion that it is an impediment to granting habeas relief. *See, e.g., Ramirez v. Noem*, 815 F. Supp. 3d 1162, 1166 (S.D. Cal. 2025); *Garcia v. Noem*, 803 F. Supp. 3d 1064, 1073-74 (S.D. Cal. 2025).

Second, Respondents argue that “[b]ecause Petitioner is lawfully detained under section 1225(b)(2) and the statute does not entitle her [sic.] to a bond hearing at this time,

her [sic.] petition must be denied.” ECF No. 8 at 5. But that argument misapprehends Mr. Gómez’s claim. Mr. Gómez asserts not that he has a statutory right to bond, but rather that due process does not permit his continued, unreviewed detention. Whether or not Mr. Gómez’s detention has a statutory basis, then, is of no moment.

Third, Respondents, stressing that Mr. Gómez “has been detained for less than 6 months,” assert that Mr. Gómez’s detention “fall[s] comparatively short of the length courts in this district have found to warrant habeas relief[.]”³ ECF No. 8 at 9-10. As to the chronological length of Mr. Gómez’s detention, Respondents are correct; Mr. Gómez has been in DHS custody since November 26, 2025, and thus will not have been detained for six months until Tuesday of next week. *See* ECF No. 7-4 at 2-3. Mr. Gómez has no objection to the Court holding his petition in abeyance until then. *Cf. Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

As for whether six months’ detention can provide a basis for granting a prolonged-detention habeas petition, courts have answered in the affirmative. *See 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.”). Respondents have pointed to a smattering of cases in

³ Without ever explaining why, Respondents assert that the Court should apply the factors set forth in *Lopez v. Garland*, 631 F.Supp. 3d 879, 879 (E.D. Cal. 2022)—to wit, “the total length of detention to date, the likely duration of future detention, and the delays in the removal proceedings caused by the petitioner and the government”—to determine whether Mr. Gómez’s detention has become unreasonably prolonged. ECF No. 8 at 9. The *Lopez* factors differ from the *Banda* factors, which Mr. Gómez has argued in his amended petition, in that they omit the petitioner’s conditions of confinement and likelihood of ultimately obtaining relief from removal. *See* 385 F. Supp. 3d at 1106. While Mr. Gómez would prevail under either set of factors, he submits that the Court should hold that the *Banda* factors are superior because conditions of confinement and likelihood of obtaining relief from removal bear closely on whether a noncitizen’s unreviewed detention runs afoul of due process. *See Zadvydas*, 533 U.S. at 689 (discussing the relevance of likelihood of removal to due-process analysis); *Bell v. Wolfish*, 441 U.S. 520, 531 (1979) (due process prohibits subjecting detainees to punitive conditions).

1 which courts in this District have granted habeas relief to petitioners detained for longer
2 than Mr. Gómez. *See* ECF No. 8 at 9. But “the fact that courts have granted habeas relief
3 in some other cases involving longer periods of detention [does not] indicate that
4 Petitioner is not also entitled to such relief[.]” *Akbar v. LaRose*, No. 25-cv-3510-RSH-
5 VET, 2026 WL 36079, at *3 (S.D. Cal. Jan. 6, 2026). Respondents also rely on *Markov v.*
6 *LaRoseLarose*, No. 25-CV-3811 JLS (SBC), 2026 WL 92069, at *2 (S.D. Cal. Jan. 13,
7 2026), in which the court denied habeas relief to a petitioner detained for nearly one year.
8 *See* ECF No. 7 at 5-8. It appears, though, that the petitioner in *Markov* relied exclusively
9 on the duration of his detention, and did not assert that any additional factors supported
10 granting his petition. *See* 2026 WL 92069, at *2. Mr. Gómez’s petition is thus
11 distinguishable.

12 Fourth, according to Respondents, “the likely duration of future detention weighs
13 against” Mr. Gómez, because, once the BIA “rules on [his] appeal, his path to release or
14 removal should be clear.” Not so. To begin, Respondents elide that there is no accounting
15 for how many months the BIA may take to decide his appeal. And, as Mr. Gómez
16 explained in his amended petition, *see* ECF No. 7, ¶ 25, the BIA’s resolution of his
17 appeal is just the first of many remaining steps in his removal case. If the BIA reverses,
18 his case will return to immigration court for further proceedings, which will be, of course,
19 subject to further appeals. And if the BIA affirms, then Mr. Gómez will be entitled to file
20 a petition for review in the Ninth Circuit and seek a stay of his removal—the end result of
21 which may be further remanded proceedings before the agency, which, in turn, will also
22 be subject to judicial review. The path that Mr. Gómez’s proceedings will take, then, is
23 anything but clear.

24 And fifth, Respondents seem to suggest that Mr. Gómez having left and then
25 sought to re-enter the United States is germane to the Court’s analysis. *See* ECF No. 8 at
26 10 (“Ordering a bond hearing or release based simply on the length of detention is
27 inappropriate here, especially when . . . Petitioner’s departure and subsequent attempt to
28

1 re-enter the U.S. undetected is the reason he is detained.”).⁴ But it is not. That fact might
2 be relevant to whether Mr. Gómez is a flight risk and thus should receive bond. But it has
3 no bearing on whether he should be afforded a bond hearing in the first place.

4 At bottom, Mr. Gómez has been detained, in abysmal conditions, for nearly half of
5 a year pending removal proceedings that will almost certainly stretch months and
6 possibly even years into the future through no fault of his own. He has a due process right
7 to have a neutral arbiter decide whether his detention for the remainder of those
8 proceedings is necessary.

9 **CONCLUSION**

10 For these reasons, the Court should grant Mr. Gómez’s petition and order him
11 released from Respondents’ custody if he is not provided within seven days with a bond
12 hearing at which DHS bears the burden of justifying his continued detention by clear and
13 convincing evidence.

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15
16 Respectfully submitted,

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18 Dated: May 22, 2026

s/ Christopher Paul Kailani Medeiros

19 Christopher Paul Kailani Medeiros
20 Attorney for Edwin Gómez Infante
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27 ⁴ To be sure, Mr. Gómez is also not seeking habeas relief “based simply on the length of [his]
28 detention[.]” ECF No. 8 at 10. Respondents have just elected not to engage with his contentions about
conditions at OMDC and his likelihood of ultimately obtaining relief from removal.