Kara Hartzler
Federal Defenders of San Diego, Inc.
225 Broadway, Suite 900
San Diego, California 92101-5030
Telephone: (619) 234-8467
Facsimile: (619) 687-2666
kara_hartzler@fd.org

Attorneys for Petitioner

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ANDERSON MORALES THOMPSON,

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, JEREMY CASEY, Warden at Imperial Regional Detention Facility,

Respondents.

Civil Case No.: 26-cv-2743-JLS-BJW

Traverse in Support of Petition for Writ of Habeas Corpus

INTRODUCTION

In his habeas petition, Mr. Morales Thompson explained that he is a citizen of the Dominican Republic who has been detained without a bond hearing for nearly eight months. However, the government maintains that Mr. Morales Thompson remains subject to mandatory detention under 8 U.S.C. § 1226(c) due to two drug-related convictions.

This is wrong for two reasons. First, Respondents have submitted no conviction documents showing that Mr. Morales Thompson was convicted of a federally-controlled substance—only "Possession of a Controlled Drug" under New Hampshire law. ECF No. 8-1 at 6–11. Second, even if Mr. Morales Thompson *were* convicted of a federally controlled substance, his detention has become unconstitutionally prolonged such that this Court should order a bond hearing.[1]

ARGUMENT

I. Respondents have not submitted conviction documents showing that Mr. Morales Thompson was convicted of a federally controlled substance.

In his amended petition, Mr. Morales Thompson argued that he had a due process right to an individualized custody determination because his detention has become prolonged. In response, the government claims that Mr. Morales Thompson is subject to mandatory detention under 8 U.S.C. § 1226(c) "due to his convictions for Control Drug Schedule 1-4: Possession, in violation of New Hampshire Revised Statute § 318-B:2,I for possession of cocaine and fentanyl. See Exh. 2." ECF No. 8 at 3.

---

[1] While Mr. Morales Thompson does not concede his parole argument, *see* ECF No. 6 at 3-7, he acknowledges that his initial removal proceedings were terminated, after which the second Notice to Appear stated that he had been admitted into the United States. ECF No. 8-1 at 25.

But Respondents' conviction documents at Exhibit 2 do not state that Mr. Morales Thompson was convicted of "possession of cocaine and fentanyl." ECF 8-1 at 6–11. Rather, they state *only* that Mr. Morales Thompson was convicted of "Possession of a Controlled Drug." *See* ECF 8-1 at 6–11. And Respondents themselves concede that the Immigration and Nationality Act "requires the government to prove that the substance underlying an alien's state law conviction for possession is one that is covered by Section 102 of the [federal Controlled Substances Act (codified as 21 U.S.C. § 802)]." ECF No. 8 at 4 (quoting *Pagayon v. Holder*, 675 F.3d 1182, 1189 (9th Cir. 2011)). While Respondents' Notice to Appear *alleges* that these offenses involved cocaine and fentanyl, ECF No. 8-1 at 28, Respondents include no judicially noticeable documents from a New Hampshire state court identifying the specific drug in question. Thus, Respondents have failed to prove that Mr. Morales Thompson is subject to mandatory detention under § 1226(c).

II. Even if Mr. Morales Thompson *were* detained under § 1226(c), his detention has become unconstitutionally prolonged.

Respondents also argue that Mr. Morales Thompson has not established a due process violation under *Demore v. Kim*, 538 U.S. 510, 513 (2003), such that he has a right to a bond hearing. ECF No. 8 at 4–8. But Respondents never acknowledge the majority's holding in *Martinez v. Clark*, 124 F.4th 775, 780 (9th Cir. 2024). There, a noncitizen was held for more than six months under § 1226(c) and then sought a bond hearing. The IJ "determined that he did not have jurisdiction to release Martinez because he was subject to mandatory detention under 8 U.S.C. § 1226(c)." *Id.* The Ninth Circuit then upheld the district court's reasoning "that Martinez's prolonged mandatory detention under § 1226(c) violated due process" and "ordered the government to show by clear and convincing evidence that Martinez presents a flight risk or a danger to the

community at the time of the bond hearing." *Id.* (quotations and alterations omitted).

As in *Martinez v. Clark*, Mr. Morales Thompson has been detained at least six months—in fact, he has been detained nearly eight months. So as in *Martinez*, his "prolonged mandatory detention under § 1226(c) violated due process" such that he should receive a bond hearing at which the government must "show by clear and convincing evidence that [Mr. Morales Thompson] presents a flight risk or a danger to the community at the time of the bond hearing." *Id.*

Nevertheless, Respondents argue that the Supreme Court in *Demore v. Kim,* 538 U.S. 510, 513 (2003), held that § 1226(c) does not violate due process. ECF 8 at 4–8. But in *Demore v. Kim*, the Court relied on its perception that "the detention at stake under § 1226(c) lasts roughly a month and a half in the vast majority of cases in which it is invoked, and about five months in the minority of cases in which the alien chooses to appeal." *Id.* at 530. Here, Mr. Morales Thompson's detention has lasted nearly eight months—almost double the length of the "minority of cases" involving an appeal. And as Respondents concede, *Demore* "did not foreclose the possibility that a noncitizen detained under § 1226(c) may establish a due process violation depending on the circumstances of their case." ECF No. 8 at 5. Thus, *Demore* does not foreclose Mr. Morales Thompson from asserting an as-applied due process challenge to § 1226(c).

Moreover, the *Banda* factors weigh in Mr. Morales Thompson's favor. Multiple courts have held that detention of a similar length has become "prolonged." *See Brissett v. Decker*, 324 F. Supp. 3d 444, 452 (S.D.N.Y. 2018); *Perez v. Decker*, No. 18-CV-5279 (VEC), 2018 WL 3991497, at *5 (S.D.N.Y. Aug. 20, 2018); *Masood v. Barr*, No. 19-CV-07623-JD, 2020 WL 95633, at *2 (N.D. Cal. Jan. 8, 2020). This factor therefore favors Mr. Morales Thompson.

Second, as just noted, Mr. Morales Thompson has reason to anticipate significant future detention, as he has appealed his case to the BIA and will likely

appeal to the Ninth Circuit. ECF No. 6-1, Exh. A at ¶ 6. All told, "[t]his process may take up to two years or longer." *Banda*, 385 F. Supp. 3d at 1119. Because "Petitioner's future detention can last several more months or even years[,]" this factor favors Mr. Morales Thompson. *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654, at *5 (S.D. Cal. Oct. 15, 2025).

Indeed, this Court has held that detention was unconstitutionally prolonged in cases where the individual was on appeal at the BIA. *See, e.g., Fernandes v. Warden,* 25-CV-3813 JLS (MSB) (S.D. Cal. January 26, 2026). In that decision, this Court explained:

> As to the likely duration of future detention, Petitioner argues that he "has reason to anticipate significant future detention during his appellate process" since a "BIA appeal itself can take months, and afterward, a petitioner may appeal to the Ninth Circuit." Pet. at 7 (citing *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1119 (W.D. Wash. 2019)). The Court agrees, since Respondents "cannot predict with any degree of confidence when the BIA appeal will be resolved." *Masood v. Barr*, No. 19-CV-07623-JD, 2020 WL 95633, at *3 (N.D. Cal. Jan. 8, 2020)….Respondents fail to address Petitioner's pending appeal. See Ret. Therefore, the likely duration of future detention weighs in Petitioner's favor.

Id. at *4–5. Here, as in *Fernandes*, Mr. Morales Thompson's case is on appeal to the BIA. ECF No. 6, Exh. A at ¶ 6. Thus, Mr. Morales Thompson's detention is—and will continue to be—prolonged.

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

Fourth and fifth, Mr. Morales Thompson has not caused any unreasonable delays in his removal proceedings; thus, this factor is arguably neutral. Accordingly, under the *Banda* factors, Mr. Morales Thompson is entitled to release or a bond hearing.

Conclusion

For these reasons, this Court should grant the petition and order that Mr. Morales Thompson receive a bond hearing at which the government bears the burden of showing by clear and convincing evidence that he is a danger or a flight risk.

Respectfully submitted,

Dated: June 9, 2026

s/ Kara Hartzler

Kara Hartzler
Federal Defenders of San Diego, Inc.
Attorneys for Petitioner
Email: kara_hartzler@fd.org