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

10 Wilfredo Rodríguez Hernández,

11 Petitioner,

12 vs.

13  
14 CHRISTOPHER J. LAROSE, Senior  
15 Warden, Otay Mesa Detention Center;  
16 PATRICK DIVVER, Field Office  
17 Director, San Diego Office of Detention  
18 and Removal, U.S. Immigration and  
19 Customs Enforcement; TODD M.  
20 LYONS, Acting Director, U.S.  
21 Immigration and Customs Enforcement,  
22 U.S. Department of Homeland Security;  
23 and MARKWAYNE MULLIN,  
24 Secretary, U.S.  
25 Department of Homeland Security,

26 Respondents.  
27  
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Case No.: 3:26-cv-03620-RSH-MMP

**PETITIONER'S TRAVERSE IN  
SUPPORT OF WRIT OF HABEAS  
CORPUS**

Name of Judicial Officer: Honorable  
Robert S. Huie  
Courtroom Number: 3B

1 **PETITIONER'S TRAVERSE TO RESPONDENT'S MOTION TO DISMISS**

2  
3 Petitioner Wilfredo Rodríguez Hernández (hereinafter, "Petitioner"),  
4 through undersigned counsel, respectfully submits this Traverse in response to  
5 Respondents' Response and Motion to Dismiss and states as follows.

6 **I. INTRODUCTION**

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8 Respondents seek dismissal on the grounds that Petitioner's successive  
9 habeas petition constitutes an abuse of the writ and fails to allege sufficient facts.  
10 The instant petition presents a materially different factual posture than Petitioner's  
11 prior habeas petition. At the time of the previous petition, Petitioner's  
12 administrative proceedings had not reached the current stage. Since then, Petitioner  
13 timely appealed the denial of his applications for cancellation of removal and  
14 asylum to the Board of Immigration Appeals ("BIA"), resulting in continued  
15 mandatory detention under 8 U.S.C. § 1226(c) for an extended and indefinite  
16 period while his appeal remains pending. The factual circumstances giving rise to  
17 this petition therefore did not exist, or had not sufficiently matured, when the  
18 earlier petition was adjudicated.

19 Moreover, entertaining this petition is necessary to prevent a fundamental  
20 miscarriage of justice because Petitioner has now been detained for approximately  
21 six months without an individualized determination of whether continued detention  
22 is necessary. Petitioner has submitted timely appeal of the denial of his relief  
23 applications, and as a result, remains subject to potentially indefinite detention  
24 pending resolution of that appeal. No briefing schedule has been issued.  
25 Accordingly, Respondents' motion should be denied.

## II. THE PETITION IS NOT AN ABUSE OF THE WRIT

Federal courts recognize that a successive habeas petition is not barred where the petitioner demonstrates (1) cause for failing to raise the claim previously and (2) that failure to consider the petition would result in a fundamental miscarriage of justice.

### A. Petitioner Had Cause for Filing a Successive Petition.

Respondent incorrectly characterizes this petition as merely repeating previously rejected claims. Petitioner's continued detention has materially changed since the prior petition was denied. Following the Immigration Judge's denial of Petitioner's applications for cancellation of removal and asylum, Petitioner exercised his statutory right to appeal to the BIA. That appeal remains pending. Consequently, because he has pursued the administrative review expressly authorized by Congress, he now remains subject to indefinite detention. The factual basis for Petitioner's current constitutional challenge therefore arose after denial of the prior habeas petition. Courts routinely recognize that prolonged immigration detention claims become ripe only as detention continues.

Each additional month of confinement changes the constitutional analysis. Accordingly, Petitioner could not have fully litigated the present claim in the earlier proceeding because the relevant facts simply did not yet exist. This petition challenges the constitutionality of Petitioner's continued detention considering its increasing duration, not the same detention period previously reviewed by this Court. Because the factual predicate is new, Petitioner has established cause.

### B. Failure to Consider the Petition Would Result in a Fundamental Miscarriage of Justice.

1 Refusing to hear the petition would result in a fundamental miscarriage of  
2 justice. Petitioner has remained detained by ICE without any individualized  
3 custody hearing.

4 His detention is not the product of delay attributable to bad-faith litigation  
5 tactics. Petitioner is pursuing the ordinary appellate review provided by federal  
6 immigration law. The Government's position effectively requires Petitioner to  
7 choose between exercising his statutory right to appeal the denial of relief; or  
8 obtaining review of the constitutionality of prolonged detention. The Constitution  
9 permits no such choice.

10 Moreover, Petitioner's individual circumstances demonstrate why continued  
11 detention without individualized review presents an extraordinary injustice.  
12 Petitioner has lived in the United States virtually his entire life. He entered this  
13 country when he was only six months old after his parents brought him across the  
14 border. As an infant, Petitioner exercised no agency or control over his manner of  
15 entry. The United States has been his only home.

16 Although Petitioner has a withheld conviction of an offense classified as an  
17 aggravated felony for immigration purposes, that conviction does not eliminate the  
18 constitutional limitations on civil immigration detention. Mandatory detention  
19 under § 1226(c) is civil, not punitive, and due process continues to require that  
20 detention bears a reasonable relationship to its regulatory purposes.

21 Petitioner's BIA appeal is expected to remain pending for many months.  
22 Such delays are commonplace and largely outside Petitioner's control. Continued  
23 detention without any opportunity to demonstrate that he is neither a flight risk nor  
24 a danger raises precisely the constitutional concerns recognized by numerous  
25 federal courts addressing prolonged detention under § 1226(c).

26 Absent judicial review, Petitioner could remain incarcerated for many  
27 additional months solely because he has exercised his lawful appellate rights.  
28

1 **III. THE PETITION ADEQUATELY STATES FACTS ENTITLING**  
2 **PETITIONER TO RELIEF**

3 Respondent also argues that the petition lacks sufficient factual allegations,  
4 however the record demonstrates otherwise. The petition alleges Petitioner has  
5 remained continuously detained under 8 U.S.C. § 1226(c) since January of 2026.  
6 The Immigration Judge denied cancellation of removal and asylum, and Petitioner  
7 timely appealed that decision to the BIA. The appeal remains pending. BIA  
8 appeals commonly require six months or more for resolution. Petitioner has  
9 received no individualized custody hearing despite his lengthy detention.

10 These factual allegations must be accepted as true at the pleading stage.  
11 Whether Petitioner's detention has become constitutionally unreasonable presents a  
12 legal issue unsuitable for dismissal on the pleadings.

13 **IV. THE CONTINUED DURATION OF DETENTION WARRANTS**  
14 **HABEAS REVIEW**

15 Although § 1226(c) authorizes mandatory detention during removal  
16 proceedings, the statute does not authorize detention that becomes constitutionally  
17 unreasonable. As detention lengthens, due process requires courts to examine  
18 whether continued confinement remains reasonably related to its regulatory  
19 purposes.  
20

21 Here, Petitioner has already been detained approximately six months; no  
22 individualized custody hearing has occurred; the administrative appeal remains  
23 pending; additional months of detention are reasonably anticipated, and Petitioner  
24 has diligently pursued available legal remedies rather than engaging in dilatory  
25 conduct. The continued deprivation of liberty therefore presents a substantial  
26 constitutional question warranting merits review rather than dismissal.  
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1 **V. CONCLUSION**

2 Respondents have failed to establish that the present petition constitutes an  
3 abuse of the writ. The petition rests upon materially changed circumstances arising  
4 after the prior habeas proceeding and challenges the ongoing constitutional  
5 implications of Petitioner's prolonged detention during the pendency of his BIA  
6 appeal.  
7

8 Petitioner has demonstrated both cause for filing this successive petition and  
9 that dismissal would result in a fundamental miscarriage of justice.

10 Accordingly, Petitioner respectfully requests that the Court:

- 11 1. Deny Respondent's request to dismiss for abuse of the writ;  
12 2. Consider the Petition on its merits;  
13 3. Grant such further relief as the Court deems just and proper.  
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15  
16 Respectfully Submitted,

17  
18 Dated July 7, 2026

19 //s// David Szeles

20 David Szeles, Esq.

21 Attorney for Petitioner  
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