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10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 JOSE LUIS BASULTO-ARAUJO,

13 Petitioner,

14 v.

15
16 MARKWAYNE MULLIN, Secretary of
17 the Department of Homeland Security,
18 TODD BLANCHE, Acting Attorney
19 General, TODD M. LYONS, Acting
20 Director, Immigration and Customs
21 Enforcement, JESUS ROCHA, Acting
22 Field Office Director, San Diego Field
23 Office, CHRISTOPHER LAROSE,
24 Warden at Otay Mesa Detention Center,

25 Respondents.

Case No.: **26-CV-3699-LL-DEB**

**First Amended Petition for Writ of
Habeas Corpus and Exhibits**

26
27 ¹ The Court provisionally appointed Federal Defenders of San Diego, Inc. Mr.
28 Basulto-Araujo would like assistance of counsel, and Federal Defenders accepts
representation. His declaration, dkt. 3, supports appointment.

INTRODUCTION

Jose Luis Basulto-Araujo has been detained at the Otay Mesa Detention Center for more than twelve months without a bond hearing. He came to the United States as a seven-year-old child in 2004 and has lived here ever since; his parents and his younger sister remain in Victorville, California. On July 8, 2025, immediately upon completing a state criminal sentence, he was taken into immigration custody, where he has remained. Because of his prior conviction, he has been detained under 8 U.S.C. § 1226(c), and he has never received an individualized hearing at which any adjudicator assessed whether his continued detention is justified. *See* Dkt. 1; Dkt. 2; Exhibit A ¶ 9.

On May 7, 2026, an immigration judge denied Mr. Basulto-Araujo's applications for asylum, withholding of removal, and protection under the Convention Against Torture, and ordered him removed to Mexico. He timely appealed. The Board of Immigration Appeals received his notice of appeal on June 1, 2026, and the appeal remains pending. Exhibit A ¶¶ 10–11.

Mr. Basulto-Araujo does not contest in this petition that he is subject to detention under § 1226(c). He contends only that his detention has become unconstitutionally prolonged. After more than a year in custody, with a BIA appeal just beginning and no end in sight, his continued detention without any individualized bond hearing violates the Due Process Clause of the Fifth Amendment as applied to him. “Arbitrary civil detention is not a feature of our American government.” *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018). As courts in this district have repeatedly recognized, a noncitizen subject to prolonged mandatory detention under § 1226(c) may bring an as-applied due process challenge and obtain a bond hearing. *See Rowe v. Archambeault*, No. 26-cv-1744-GPC-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); *Sandesh v. LaRose*, No. 26-cv-846-JES-DDL, 2026 WL 622690, *2–*4

(S.D. Cal. Mar. 5, 2026) (ordering relief in a mandatory-detention case); *see also* *Rodriguez v. Frink*, __ F. Supp. 3d __, 2026 WL 709487, *2–*4 (S.D. Tex. Mar. 13, 2026) (surveying courts of appeals approving as-applied § 1226(c) challenges).

The seriousness of the predicate offense does not defeat this claim; it is precisely what an individualized hearing exists to evaluate. Mr. Basulto-Araujo does not ask this Court to order his release outright or to find that he poses no danger. He asks only that this Court order the process the Constitution requires after prolonged detention: a hearing before a neutral immigration judge at which the government bears the burden of proving by clear and convincing evidence that his continued detention is justified because he is a danger to the community or a flight risk, at which the judge considers his ability to pay and alternatives to detention, and of which a complete record is preserved.

STATEMENT OF FACTS

Mr. Basulto-Araujo is a citizen of Mexico, [REDACTED] Exhibit A ¶ 1. His family brought him to the United States on October 31, 2004, when he was seven years old, and he has lived here ever since. *Id.* ¶ 3. He grew up in Victorville, California, where his parents and his younger sister [REDACTED] still live; his entire immediate family is in the United States. *Id.* ¶¶ 3, 10. He attended school in the United States from the first grade through the twelfth grade at Granite Hills High School in Apple Valley. *Id.* ¶ 4. He first received DACA in 2013 and again from 2015 to 2017. *Id.* ¶ 5. From 2022 to 2024 he worked in construction, and before his detention he lived with and helped support his parents and sister. *Id.* ¶ 6.

Mr. Basulto-Araujo has two prior convictions: a 2016 felony conviction for shooting at an inhabited dwelling, for which he served six months, and a 2024 felony conviction for first-degree residential burglary, for which he served twelve months. *Id.* ¶ 7. Immediately upon completing the sentence on the 2024

1 conviction, on July 8, 2025, he was taken into immigration custody and
2 transported to the Otay Mesa Detention Center, where he has remained
3 continuously ever since. *Id.* ¶¶ 2, 7–8; Dkt. 1.

4 In his removal proceedings, Mr. Basulto-Araujo initially sought
5 cancellation of removal, later withdrew that application, and applied for asylum,
6 withholding of removal, and protection under the Convention Against Torture,
7 based on his fear of return to a country he left as a small child and where he has
8 no family or support. Exhibit A ¶ 10. He appeared before the immigration judge
9 on approximately seven occasions. *Id.* ¶ 9. On May 7, 2026, the immigration
10 judge denied his applications and ordered him removed to Mexico. *Id.* ¶ 11. He
11 timely appealed, and the Board of Immigration Appeals received his notice of
12 appeal on June 1, 2026. *Id.* The appeal remains pending, and no briefing schedule
13 has yet issued.

14 At no point during his more than twelve months in immigration custody has
15 Mr. Basulto-Araujo received a bond hearing or any individualized determination
16 of whether his detention is justified. *Id.* ¶ 9; Dkt. 2. At the outset of his
17 proceedings, the immigration judge told him only that he needed to locate a
18 sponsor; he has never had a hearing at which he could show that he is not a
19 danger or a flight risk. Exhibit A ¶ 9.

20 Presently, Mr. Basulto-Araujo is held in a large, crowded dormitory with
21 roughly one hundred people, served by two microwaves and four showers, where
22 detainees do not reliably receive basic necessities such as adequate clothing. *Id.* ¶
23 12. He has had no disciplinary incidents during his detention. *Id.* Because his
24 family cannot travel to visit, his only contact with them is by telephone. *Id.* ¶ 10.

25 A recent empirical analysis of the Board’s detained docket shows that
26 appeals like Mr. Basulto-Araujo’s now take substantially longer than they once
27 did. The median processing time for detained case appeals rose from 111 days in
28 2024 to 216 days—about seven months—in the first quarter of 2026, nearly

doubling. Exhibit B ¶¶ 3, 13. Roughly one in three appeals now takes more than a year, and one in ten takes more than three and a half years. *Id.* ¶¶ 14, 18.

LEGAL ARGUMENT

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

The government sometimes argues that this Court’s jurisdiction over immigration habeas petitions under 28 U.S.C. § 2241 is taken away by 8 U.S.C. § 1252(g). That argument is “mistaken.” *Hernandez Cruz v. Noem*, No. 25-cv-2566-SB-MAA, 2025 WL 3482630, *1 (C.D. Cal. Dec. 2, 2025).

Courts “should read § 1252(g) narrowly.” *Ibarra-Perez v. United States*, 154 F.4th 989, 991 (9th Cir. 2025) (citing *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020)). That provision’s jurisdiction-stripping reach is limited to “three discrete actions”: the “decision or action to *commence* proceedings, *adjudicate* cases, or *execute* removal orders.” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (quoting 8 U.S.C. § 1252(g)). It does not sweep in every claim that can technically be said to arise from those three actions. *See id.* at 482–83.

Mr. Basulto-Araujo’s claim falls outside § 1252(g). Like many other habeas petitioners in immigration detention, he “is seeking to review the legality of his detention, arguing that the length of time he ha[s] been detained here violates due process—rather than challenging the decision to commence proceedings, the adjudication of his removal case, or an action to execute his removal order.” *Gao v. LaRose*, 805 F. Supp. 3d 1106, 1109 (S.D. Cal. 2025)) (Huie, J.) (finding jurisdiction over § 2241 habeas petition in a prolonged detention case for an arriving noncitizen and ordering an individualized bond hearing). This Court’s jurisdiction is “not barred by Section 1252(g).” *Id.*; accord *Khorsheed v. LaRose*, No. 25-cv-3346-BTM-KSC, 2025 WL 3638141, *1 (S.D. Cal. Dec. 15, 2025).

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1 **II. The Fifth Amendment’s Due Process Clause prohibits prolonged**
 2 **mandatory detention under § 1226(c) without a bond hearing.**

3 The Fifth Amendment’s Due Process Clause countermands the
 4 government’s statutory authority to detain noncitizens without bond hearings.
 5 Mr. Basulto-Araujo is detained under 8 U.S.C. § 1226(c), which requires
 6 detention without an individualized bond hearing for certain noncitizens with
 7 qualifying convictions.

8 The Supreme Court upheld § 1226(c) against a facial challenge in *Demore*
 9 *v. Kim*, 538 U.S. 510 (2003), but did so only as applied to “the limited period
 10 necessary” to complete removal proceedings—a period the Court understood to
 11 last, on average, a matter of weeks or a few months. *Id.* at 529–31. And in
 12 *Jennings v. Rodriguez*, the Court held that § 1226(c) contains no implicit statutory
 13 limit on the length of detention, while expressly declining to decide whether
 14 prolonged mandatory detention without a bond hearing violates due process, and
 15 remanding that constitutional question. 583 U.S. 281, 297, 313–14 (2018).

16 Since *Jennings*, courts have overwhelmingly answered that constitutional
 17 question in the noncitizen’s favor. “Nearly all district courts that have considered
 18 the issue agree that prolonged mandatory detention pending removal proceedings,
 19 without a bond hearing, will—at some point—violate the right to due process.”
 20 *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1111 (W.D. Wash. 2019) (cleaned
 21 up) (collecting cases); *accord Rowe*, 2026 WL 879487, at *3–*5 (ordering a bond
 22 hearing for a noncitizen held under § 1226(c) whose year-long detention violated
 23 due process). The Ninth Circuit itself has expressed “grave doubts that any statute
 24 that allows for arbitrary prolonged detention without any process is constitutional,
 25 or that those who founded our democracy precisely to protect against the
 26 government’s arbitrary deprivation of liberty would have thought so.” *Rodriguez*
 27 *v. Marin*, 909 F.3d at 256–57.

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1 This is not a challenge to the fact of Mr. Basulto-Araujo's mandatory-
 2 detention classification, and it does not ask this Court to decide in the first
 3 instance whether he should be released. It asks only that, after prolonged
 4 detention, he receive the individualized hearing at which such questions,
 5 including any danger he may pose, are properly decided, with the government
 6 bearing the burden of justifying his continued confinement.

7 **III. Courts differ over when detention becomes unconstitutionally**
 8 **prolonged, but Mr. Basulto-Araujo prevails under any standard.**

9 Although courts agree that due process requires a bond hearing once
 10 detention becomes unreasonably prolonged, they differ over how to identify that
 11 point. *Sanchez-Rivera v. Matuszewski*, No. 22-cv-1357-MMA (JLB), 2023 WL
 12 139801, at *5–6 (S.D. Cal. Jan. 9, 2023) (surveying approaches). Some courts
 13 hold that detention becomes prolonged after roughly six months. *See Rodriguez v.*
 14 *Nielsen*, No. 18-cv-04187-TSH, 2019 WL 7491555, at *6 (N.D. Cal. Jan. 7,
 15 2019). Under that approach, Mr. Basulto-Araujo—detained more than twelve
 16 months—qualifies automatically.

17 Other courts apply a multifactor reasonableness test that generally
 18 considers (1) the total length of detention to date, (2) the likely duration of future
 19 detention, (3) delays caused by the petitioner or the government, (4) the
 20 conditions of detention, and (5) the likelihood that the proceedings will yield a
 21 different final order. *Mtiulishvili v. LaRose*, No. 26-cv-387-RSH-JLB, 2026 WL
 22 377870, at *2 (S.D. Cal. Feb. 10, 2026); *Sanchez-Rivera*, 2023 WL 139801, at
 23 *5–6. Some courts decline to weigh the fourth and fifth factors. *Lopez v. Garland*,
 24 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022);); *accord Sanchez-Rivera*, 2023 WL
 25 139801, at *5–6. Mr. Basulto-Araujo prevails under any of these tests.

26 **A. Length of detention.**

27 The “most important factor,” *Banda*, 385 F. Supp. 3d at 1118, decisively
 28 favors a hearing. Mr. Basulto-Araujo has been detained for more than twelve

months—longer than the detention in numerous cases in which courts in this district have ordered bond hearings, and well beyond the “limited period” *Demore* contemplated. *See Rowe*, 2026 WL 879487, at *5 (collecting cases finding detention of seven to ten months unreasonable); *Mtiulishvili*, 2026 WL 377870, at *3 (ordering a bond hearing after roughly ten months). What is being examined is the detention of a person who, throughout that year, appears to have never received any individualized determination that his confinement is justified. *Cf. Jamal A. v. Whitaker*, 358 F. Supp. 3d 853, 859 (D. Minn. 2019).

B. Likely future duration.

Mr. Basulto-Araujo faces significant additional detention. His BIA appeal was received only on June 1, 2026, and no briefing schedule has issued. Exhibit A ¶ 11. The detained BIA docket has slowed markedly: the median detained appeal now takes about seven months, roughly one in three takes more than a year, and one in ten takes more than three and a half years. Exhibit B ¶¶ 3, 13, 14, 18. And should the BIA deny relief, “the appeal to the BIA may take months, and any appeal to the Ninth Circuit thereafter may take years.” *Beyene v. LaRose*, No. 26-cv-3037-JLS-DDL, 2026 WL 1708599, *2 (S.D. Cal. June 12, 2026); *see Abdul Kadir v. LaRose*, No. 25-cv-1045-LL-MMP, 2025 WL 2932654, at *5 (S.D. Cal. Oct. 15, 2025). This factor favors him.

C. Delay.

This factor is at most neutral. Mr. Basulto-Araujo has done no more than pursue the forms of relief available to him and appear at his hearings; the elapsed time reflects the adjudication of his applications and the immigration court’s own schedule, not dilatory conduct. Exhibit A ¶¶ 9–11.

D. Conditions of confinement.

Courts in this district have repeatedly recognized that conditions at the Otay Mesa Detention Center are “indistinguishable from penal confinement,” and that this factor supports a finding of unconstitutionally prolonged detention.

1 *Mtiulishvili*, 2026 WL 377870, at *3 (quoting *Kydyrali v. Wolf*, 499 F. Supp. 3d
2 768, 773 (S.D. Cal. 2020)); accord *Ayideji v. Casey*, No. 26-cv-16244-CAB-
3 MMP, 2026 WL 948669, *2 (S.D. Cal. Apr. 8, 2026). Mr. Basulto-Araujo's own
4 conditions, which include an overcrowded dormitory of roughly one hundred
5 people, sharing two microwaves and four showers, without reliable access to
6 basic necessities, confirm the point. Exhibit A ¶ 12.

7 **E. Likelihood of a different final order.**

8 To the extent this factor is considered, Mr. Basulto-Araujo has a pending
9 appeal of the denial of his asylum, withholding, and CAT applications. Exhibit A
10 ¶ 11. Several courts decline to weigh this factor at all in assessing whether due
11 process requires a hearing. *See, e.g., Lopez*, 631 F. Supp. 3d at 879. Under any
12 test, Mr. Basulto-Araujo is entitled to a bond hearing.

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PRAYER FOR RELIEF

Mr. Basulto-Araujo's continued detention without a bond hearing violates the Due Process Clause. He respectfully requests that this Court:

Accordingly, Petitioner respectfully requests that this Court order that:

1. Order Respondents to provide Mr. Basulto-Araujo with an individualized bond hearing before a neutral immigration judge within fourteen days of the Court's order, at which:
 - a. the government bears the burden of establishing by clear and convincing evidence that his continued detention is justified because he poses a danger to the community or a flight risk;
 - b. the immigration judge considers alternative conditions of release and his ability to pay any bond, if the judge determines that bond is appropriate; and
 - c. Respondents make a complete record of the hearing available to Mr. Basulto-Araujo and his counsel upon request;
2. In the alternative, order such other relief as necessary to remedy the ongoing deprivation of his liberty; and
3. Order all other relief that the Court deems just and proper.

Respectfully submitted,

Dated: July 10, 2026

s/ Payam Fakharara

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