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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

**TOWINSKY LERICHE
Petitioner,**

v.

**WARDEN OF THE CALIFORNIA
CITY DETENTION FACILITY, et al.,
Respondents.**

Case No.: 1:26-cv-05315-VC

**PETITIONER'S REPLY
TO RESPONDENTS' MOTION
TO DISMISS**

INTRODUCTION

Petitioner TOWINSKY LERICHE submits this Reply in opposition to the Government's Motion to Dismiss (ECF 9). For the reasons set forth below, Respondents' Motion should be denied.

Petitioner has now spent nearly nine months in immigration detention without ever receiving an individualized hearing at which the government was required to prove, by clear and convincing evidence, that his continued confinement is justified by danger to the community or risk of flight. Petitioner has only received a single custody redetermination ("Joseph") hearing on or about December 18, 2025, at which the IJ found that Petitioner's detention was mandatory

1 under 1226(c). Respondents' Motion to Dismiss (ECF No. 9), does not dispute that fact. Instead,
2 Respondents ask the Court to end this case on three grounds, none of which withstand scrutiny.

3 Respondents contend that Petitioner is categorically subject to mandatory detention under
4 8 U.S.C. § 1226(c) because his March 2025 Florida robbery conviction is an aggravated felony.
5 [ECF 9 at 2-3]. Respondents' own exhibits, however, defeat that premise. The state court
6 judgment referenced by Respondents in their motion as Exhibit B shows that the court withheld
7 imposition of sentence and placed Petitioner on community control and probation; not a single
8 day of imprisonment was ordered. Petitioner was not enough of a danger to society to incarcerate
9 at that time. There has been no new developments or violations by Petitioner. Because both the
10 aggravated-felony definitions Respondents invoke require “a term of imprisonment [of] at least
11 one year,” 8 U.S.C. § 1101(a)(43)(F), (G), the record Respondents themselves submitted does not
12 establish that Petitioner's conviction qualifies. Respondents' separate firearms-based theory of
13 mandatory detention fares no better: the charging document underlying Petitioner's conviction,
14 also part of Respondents' Exhibit B, identifies the weapon at issue as a BB gun — a device that
15 does not meet the federal statutory definition of “firearm” under 18 U.S.C. § 921(a)(3), the very
16 definition the Notice to Appear invokes.

17 Respondents argue that Petitioner failed to exhaust administrative remedies because he did
18 not appeal the Immigration Judge's December 18, 2025 custody-redetermination order to the
19 Board of Immigration Appeals. (ECF 9 at 4-5). Exhaustion under 28 U.S.C. § 2241 is a prudential
20 doctrine, not a jurisdictional bar, and this Court retains discretion to excuse it. That discretion is
21 easily exercised here: when Petitioner reserved his appeal rights, he had been detained barely five
22 weeks, and his present claim (that nine months of detention without any individualized bond
23 hearing violates due process) did not exist in ripe form and could not have been exhausted
24 through an appeal filed in January 2026. Nor could the BIA have granted the relief Petitioner

1 seeks: an order compelling the government to justify continued detention by clear and convincing
2 evidence, with consideration of alternatives to detention and ability to pay bond, is a
3 constitutional remedy that lies with this Court, not the agency.

4 Respondents argue Petitioner has not adequately alleged that his detention has become
5 unreasonably prolonged. [ECF 9 at at 5-7.] To the contrary, Petitioner's detention, which is now
6 approaching nine months, exceeds by nearly fifty percent the six-month period that courts in this
7 Circuit have repeatedly recognized as the point at which detention becomes presumptively
8 prolonged. Respondents' assertion in their motion that Petitioner has only been detained for one
9 month is erroneous. [ECF 9 at 3]. Petitioner has never received an individualized danger/flight
10 determination under the constitutionally required clear-and-convincing-evidence standard; he has
11 significant, undisputed ties to the United States, including a citizen spouse and three citizen
12 children, and no ties whatsoever to Haiti; and any delay in his removal proceedings has resulted
13 from his own good-faith efforts to obtain and prepare with counsel, which courts do not hold
14 against a noncitizen. These allegations, taken as true, more than suffice to survive a motion to
15 dismiss.

16 For these reasons, and those set forth below, Petitioner respectfully requests that the Court
17 deny Respondents' Motion to Dismiss.

18 II. BACKGROUND

19 The following facts are drawn from Respondents' own exhibits filed in support of the
20 Motion to Dismiss, ECF No. 9, and are undisputed:

21 Petitioner is a 22-year-old native and citizen of Haiti who has lived in the United States
22 continuously as a lawful permanent resident since December 2010, when he entered as a six-year-
23 old child accompanying his mother, herself a lawful permanent resident. [ECF 9 Ex. A (I-213) at
24 2.]

Petitioner's mother is deceased. Following her death, Petitioner was placed in the custody of the Florida Department of Children and Families and raised in foster care. Petitioner has no family or relatives remaining in Haiti.

Petitioner is married to a United States citizen and is the father of three United States citizen children who depend on him for financial support.

On March 26, 2025, the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, accepted Petitioner's guilty plea to one count of robbery in violation of Florida Statute § 812.13(2)(b). [See ECF 9 Ex. B at 2]. The underlying charging document alleges that, in the course of the robbery, Petitioner “carried a weapon to wit: a BB gun.” [See ECF 9 Ex. B at 10].

The state court withheld imposition of sentence and placed Petitioner on community control followed by probation. *Id.* The sections of the judgment authorizing commitment to the Department of Corrections or confinement in the county jail are left blank and unchecked. *Id.* at 3. No term of imprisonment was ordered. Petitioner was taken into ICE custody on November 13, 2025.

On December 8, 2025, at Petitioner's request and with the assistance of counsel, the Immigration Judge granted a continuance of Petitioner's removal hearing.

On December 18, 2025, the Immigration Judge denied Petitioner's request for a change in custody status in a two-line order stating that Petitioner is “[s]ubject to mandatory detention as Respondent was convicted of armed robbery. Stokeling and Herrera cases apply.” [ECF 9 Ex. E at 1]. Petitioner reserved his right to appeal; Respondents waived theirs. *Id.* at 2.

As of the filing of this Reply, Petitioner has been detained for approximately eight and one-half months. His individual merits hearing has not been scheduled, and his applications for relief from removal remain pending before the Immigration Court.

III. LEGAL STANDARD

A motion to dismiss a habeas petition is evaluated under standards that, while informed by Federal Rule of Civil Procedure 12(b)(6), also account for the unique posture of habeas proceedings and the liberal construction owed to a petition (like this one) originally filed by a *pro se*, detained litigant. See *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (pro se pleadings must be liberally construed) (citation omitted); *Bretz v. Kelman*, 773 F.2d 1026, 1027 n. 1 (9th Cir.1985) (courts “have an obligation where the petitioner is pro se, particularly in civil rights cases, to construe the pleadings liberally and to afford the petitioner the benefit of any doubt.”). The Court accepts the well-pleaded factual allegations of the Petition as true and construes them in the light most favorable to Petitioner. Where, as here, Respondents' own exhibits contradict the factual premises of their Motion, the Court may and should consider those exhibits in evaluating whether dismissal is warranted. See generally Fed. R. Civ. P. 10(c).

IV. ARGUMENT

A. Respondents Have Not Established, on This Record, That Petitioner Is Subject to Mandatory Detention Under § 1226(c).

Respondents' entire Motion rests on the premise that Petitioner falls within the mandatory-detention provisions of 8 U.S.C. § 1226(c) because he was convicted of an aggravated felony, specifically a “crime of violence” under 8 U.S.C. § 1101(a)(43)(F), or, alternatively, is deportable on a firearms ground under 8 U.S.C. § 1227(a)(2)(C). [ECF 9 at 2-3]. Both theories are undermined by Respondents' own exhibits.

1. Neither Aggravated-Felony Ground Respondents Invoke Is Satisfied Because No Term of Imprisonment Was Imposed.

Section 1101(a)(43)(F) defines an aggravated felony, for the “crime of violence” category, as an offense described in 18 U.S.C. § 16 “for which the term of imprisonment [is] at least one

year.” 8 U.S.C. § 1101(a)(43)(F) (emphasis added). The “theft offense” category Respondents cite in passing, ECF 9 at 3 (citing § 1101(a)(43)(G)), carries the identical one-year imprisonment requirement. Both provisions therefore require not only a qualifying offense, but a sentence to a “term of imprisonment” of at least one year.

Respondents' own Exhibit B shows that requirement is not met. The state court's judgment reflects that “the imposition of sentence is hereby withheld” and that Petitioner was placed on community control followed by five years of probation. ECF 9 Ex. B at 2. Section 3 of the judgment form, titled “Incarceration During Portion of Supervision Sentence,” which would reflect any order committing Petitioner to the Department of Corrections or confining him in county jail, is entirely blank — no box is checked, no term is filled in. *Id.* at 3. On the face of the very judgment Respondents submitted, the state court ordered no period of incarceration whatsoever.

Community control under Florida law is a form of intensive, supervised probation, commonly involving home confinement and electronic monitoring, but it is not imprisonment. Nor does 8 U.S.C. § 1101(a)(48)(B), which deems a “term of imprisonment” to include a period of incarceration a court orders even if execution of that period is suspended, rescue Respondents' position: that provision counts a suspended sentence of incarceration, but there is no sentence of incarceration here to suspend or count. Because no “term of imprisonment” (let alone one of at least one year) was ever imposed, Petitioner's conviction does not qualify as an aggravated felony under either § 1101(a)(43)(F) or (G), and the Notice to Appear's aggravated-felony charge under § 237(a)(2)(A)(iii) does not, on this record, support mandatory detention under § 1226(c)(1)(B).

Respondents may point to the Immigration Judge's December 18, 2025 order stating that Petitioner is “subject to mandatory detention” because he “was convicted of armed robbery” and that “Stokeling and Herrera cases apply.” ECF 9 Ex. E at 1. That two-sentence order does not

address, and Respondents' Motion does not explain, how a conviction resulting in no term of imprisonment satisfies a statutory definition that expressly requires one. Whatever bearing *Stokeling v. United States*, 586 U.S. 44 (2019), has on whether Florida robbery involves the requisite “physical force” for purposes of 18 U.S.C. § 16(a), it says nothing about the independent, and unmet, one-year-imprisonment requirement in § 1101(a)(43)(F). At minimum, this discrepancy between the charge and the record demonstrates that Respondents have not carried their burden of establishing entitlement to dismissal as a matter of law.

2. The Firearms Deportability Ground Rests on a BB Gun, Which Is Not a “Firearm”

Under the Federal Definition the Notice to Appear Invokes.

Respondents' Motion does not discuss it, but the Notice to Appear also charges Petitioner as deportable under 8 U.S.C. § 1227(a)(2)(C) for having been convicted of an offense involving “any weapon, part, or accessory which is a firearm or destructive device, as defined in Section 921(a) of Title 18.” ECF 9 Ex. C at 1 (I-862, continuation page). This ground independently triggers mandatory detention under § 1226(c)(1)(B). It, too, fails on this record.

The charging document underlying Petitioner's conviction (again, Respondents' own exhibit) alleges that Petitioner “carried a weapon to wit: a BB gun” during the robbery. ECF 9 Ex. B at 10(emphasis added). Title 18 U.S.C. § 921(a)(3) defines “firearm,” for federal statutory purposes, as “any weapon ... which will or is designed to or may readily be converted to expel a projectile by the action of an explosive.” A BB gun, which propels a projectile using compressed air, carbon dioxide, or a spring mechanism, not an explosive charge, falls outside that definition. Because the very instrument identified in the conviction record does not meet the federal statutory definition the Notice to Appear invokes, Respondents' alternative, firearms-based theory of mandatory detention is likewise unsupported on this record.

3. At a Minimum, These Unresolved Questions Preclude Dismissal.

Respondents bear the burden, on a motion to dismiss a habeas petition premised on the applicability of a mandatory-detention statute, of establishing that the statute applies. The record here, drawn exclusively from Respondents' own submissions, raises serious and unresolved questions about whether either statutory basis for mandatory detention that Respondents invoke is actually satisfied. These questions cannot be resolved against Petitioner on a motion to dismiss; if anything, they underscore why Petitioner is entitled to the individualized hearing the Petition seeks, at which these very issues can be developed and decided.

B. Petitioner's Constitutional Claim Is Not Barred by a Failure to Exhaust.

Respondents argue that the Petition must be dismissed because Petitioner did not appeal the Immigration Judge's December 18, 2025 custody order to the BIA. [ECF 9 at 4-5]. This argument misunderstands both the nature of exhaustion under § 2241 and the nature of the claim Petitioner brings.

1. Exhaustion Under § 2241 Is Prudential and Discretionary, Not Jurisdictional.

Unlike habeas petitions brought by state prisoners under 28 U.S.C. § 2254, which are governed by a statutory exhaustion requirement, exhaustion of administrative remedies prior to habeas review under 28 U.S.C. § 2241 is a judicially created, prudential doctrine. See *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001), abrogated on other grounds by *Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006); *Puga*, 488 F.3d at 815. Courts accordingly have discretion to excuse exhaustion where, among other things, pursuing further administrative review would be futile, would not develop a factual record the agency is better positioned to create, or would not allow the agency to correct the very error at issue. *Puga*, 488 F.3d at 815.

2. Petitioner's Prolonged-Detention Claim Was Not Ripe in December 2025 and Cannot Be Exhausted Through an Appeal the BIA Has No Power to Grant.

Respondents' reliance on *Leonardo v. Crawford*, 646 F.3d 1157 (9th Cir. 2011), is

misplaced. Leonardo involved a noncitizen who received an individualized Casas-Castrillon bond hearing on the merits — with the IJ weighing danger and flight risk — and then sought habeas review of that discretionary determination without first appealing the adverse decision to the BIA. *Id.* at 1159-60. That is not this case. Petitioner does not ask this Court to review, on habeas, the correctness of a discretionary danger/flight finding the Immigration Judge already made under the constitutionally required framework. He could not have received such a hearing on December 18, 2025, because the Immigration Judge concluded he was subject to mandatory detention and therefore ineligible for any individualized danger/flight assessment at all. Ex. E at 1. There was and is nothing about that determination for the BIA to review on the merits that would furnish Petitioner the individualized bond hearing he seeks here.

More fundamentally, the claim Petitioner brings in this Petition — that the cumulative length of his detention, now approaching nine months, has become constitutionally unreasonable absent an individualized hearing — had not yet arisen when he reserved his appeal rights in December 2025. At that point Petitioner had been detained for barely five weeks. A due process claim premised on the prolonged duration of detention ripens, if at all, only as detention continues; it cannot be exhausted before it exists. Cf. *Diouf v. Napolitano*, 634 F.3d 1081, 1091-92 (9th Cir. 2011) (recognizing that detention “becomes prolonged” at a later point in time, triggering heightened process). Nothing in the record suggests Petitioner has since sought, or been denied, a further custody redetermination reflecting the additional eight months of detention that have accrued since the December 2025 hearing.

Finally, and independently, the BIA has no authority to grant Petitioner the relief he seeks: a declaration that due process requires the government to justify his continued detention by clear and convincing evidence, taking into account alternatives to detention and his ability to pay bond. See *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011). That is a constitutional determination

reserved to the courts. Requiring Petitioner to seek that relief from the agency in the first instance — an agency bound to apply the very mandatory-detention statute Petitioner challenges as unconstitutional as applied to him — would be futile. See *Puga*, 488 F.3d at 815 (exhaustion unnecessary where administrative review is unlikely to allow the agency to correct its own mistakes).

C. Petitioner Has Adequately Alleged That His Detention Has Become Unreasonably Prolonged.

Respondents' final argument that Petitioner "has not proven" his detention is unconstitutionally prolonged [ECF 9 at 5] misapplies the standard governing a motion to dismiss. Petitioner need not "prove" his claim at the pleading stage; he need only allege facts that, taken as true, plausibly entitle him to relief. He has done so, whether the Court applies the *Mathews v. Eldridge* framework set out in the Petition, or the five-factor reasonableness test from *Doe v. Chestnut*, 810 F. Supp. 3d 1169 (E.D. Cal. 2025), that Respondents invoke.

1. Length of Detention.

Respondents erroneously state Petitioner's detention as having lasted "less than one month," [ECF 9 at 3]. This materially misrepresents the facts in this case. Petitioner has been in detention since November 2025, a period of over eight (8) and a half months, exceeding by nearly fifty percent the six-month period that Ninth Circuit district courts have repeatedly identified as the point at which immigration detention becomes presumptively prolonged. See *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1201 (9th Cir. 2022) (noting detention becomes "prolonged" at approximately six months); *Diouf*, 634 F.3d at 1091. This factor, which the test under *Doe v. Chestnut* 810 F. Supp. 3d at 1179 (citing *German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 211 (3d Cir. 2020)) identifies as "the most important," weighs heavily in Petitioner's favor.

2. Government's Contribution to the Delay.

This factor also weighs in Petitioner's favor. The only continuance reflected in the record was requested by Petitioner, with the assistance of counsel, to prepare his case — a routine and legitimate exercise of the right to counsel that courts do not hold against a detained noncitizen. [ECF 9 Ex. D at 33]. Finding that this brief continuance to have adequate time to work with counsel on his defense would go against Petitioner would be untenable. See *Masood v. Barr*, No. 19-CV-07623-JD, 2020 WL 95633, at *3 (N.D. Cal. Jan. 8, 2020) ("It ill suits the United States to suggest that [Petitioner] could shorten his detention by giving up" his rights to pursue relief). Petitioner's individual merits hearing remains unscheduled through no fault of his own.

3. Petitioner Has Never Received an Individualized Danger/Flight Determination Under the Constitutionally Required Standard.

Because the Immigration Judge found Petitioner categorically ineligible for bond, Petitioner has never received a hearing at which the government bore the burden of proving, by clear and convincing evidence, that his continued detention is justified by danger or flight risk, or at which alternatives to detention or Petitioner's ability to pay a bond were considered. See *Singh*, 638 F.3d at 1203. This is precisely the "risk of erroneous deprivation" the *Mathews* framework is designed to address, and it exists independent of any factual dispute the Court might need to resolve. Indefinite civil detention without any individualized review ever is not reconcilable with Due Process.

4. Petitioner's Ties to the United States Favor Release or, at Minimum, an Individualized Hearing.

Petitioner has lived in the United States as a lawful permanent resident since he was six years old. He has no family remaining in Haiti. He is married to a United States citizen and is the father of three United States citizen children who rely on him for support. These undisputed ties

bear directly on both his flight risk and the availability of alternatives to detention which are factors the Immigration Judge never had occasion to weigh because he found Petitioner categorically ineligible for any individualized assessment at all.

5. Conditions of Detention Compared to Conditions for Pretrial Criminal Detainees

Petitioner is currently held at the California City Detention Center, over 3,000 miles away from his family and support system. Pursuant to the Judge's order in *Ruiz v. US ICE* (3:25-cv-09757) an independent monitor, Dr. Muthusamy Anandkumar, was appointed to evaluate the conditions at the facility at which Petitioner is currently held. According to widely available news reports, the monitor "found 13 areas of deficiency in the healthcare program in California City. Among them were inadequate emergency care, dental care and chronic disease management. The monitor also found that the facility did not provide timely access to prescribed medications." See <https://calmatters.org/justice/2026/07/ice-detention-center-healthcare-report/>

Taken together, these allegations plausibly establish that Petitioner's detention, considered in its totality and in light of "all the other circumstances," *Doe v. Chestnut*, 810 F. Supp. 3d at 1179 (quoting *German Santos*, 965 F.3d at 211), has become unreasonably prolonged. Dismissal on the pleadings is not warranted.

V. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court deny Respondents' Motion to Dismiss and proceed to consider the merits of the Petition, order Petitioner's immediate release, or in the alternative, issue a writ of habeas corpus requiring Respondents to provide Petitioner a bond hearing before an immigration judge promptly and within a reasonable period, at which the government bears the burden of justifying Petitioner's continued detention by clear and convincing evidence

Dated: August 3, 2026

Respectfully submitted,

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