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10
11 UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
13 EASTERN DIVISION

14 GURKAN SOYKAN,
15
16 Petitioner,
17 v.

18 SECRETARY OF THE
DEPARTMENT OF HOMELAND
SECURITY, Kristi Noem; ACTING
19 COMMISSIONER OF U.S.
CUSTOMS AND BORDER
20 PROTECTION, Pete R. Flores;
ATTORNEY GENERAL OF THE
21 U.S., Pam Bondi; DIRECTOR OF THE
U.S. CITIZENSHIP AND
22 IMMIGRATION SERVICES, Andrew
J. Davidson; WARDEN OF
23 ADELANTO ICE PROCESSING
CENTER, James Janecka,
24
25 Respondents.

No. 5:25-cv-00877-DSF-AS

**FEDERAL RESPONDENTS' RETURN
TO PETITIONER GURKAN
SOYKAN'S PETITION FOR WRIT OF
HABEAS CORPUS**

**[Filed Concurrently with the Declaration
of Rogelio A. Torres]**

Honorable Alka Sagar
United States Magistrate Judge

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Gurkan Soykan (“Petitioner”) brings this Petition for Writ of Habeas Corpus challenging his detention pending resolution of removal proceedings under 8 U.S.C. § 1231(a)(6). Dkt. 1 (“Petition” or “Pet.”), Ex. A. The Petition should be denied because Petitioner fails to state a claim for habeas relief. Petitioner was and has been lawfully detained under 8 U.S.C. § 1226(a), which authorizes the detention of aliens pending the resolution of removal proceedings. Petitioner appeared before an immigration judge (“IJ”) who ordered his removal, which Petitioner is appealing before the Board of Immigration Appeals (“BIA”). Moreover, Petitioner was entitled to—and was afforded—a *Rodriguez* bond hearing during his removal proceeding, and the IJ found that Petitioner would pose a danger to the community due to his numerous driving under the influence of alcohol and other convictions. Pet., Ex. C. Thus, Petitioner has received all due process to which he is entitled and his continued detention pending the resolution of his removal proceedings to Turkey (Türkiye) is lawful. Respondents respectfully request that the Court dismiss and deny the Petition. The Respondents do not contend that an evidentiary hearing is needed to resolve the issues in this case.

II. RELEVANT FACTS AND PROCEDURAL HISTORY

A. Petitioner’s Entry into The United States And Criminal Convictions

Petitioner is a native and citizen of Turkey (Türkiye). Pet., Ex. B; Declaration of Rogelio A. Torres (“Torres Decl.”) ¶ 2. He entered the United States in 2007 on an F-1 student visa. Pet. at 2; Torres Decl. ¶ 2. On April 3, 2011, Petitioner’s student status was terminated. Torres Decl. ¶ 2.

On July 24, 2012, Petitioner was convicted in the Los Angeles Superior Court, Torrance Courthouse, for the offense of Loud or Unreasonable Noise, in violation of California Penal Code (“CPC”) § 415(2), a misdemeanor. *Id.* ¶ 3. On or about April 21, 2013, Petitioner was arrested on a warrant for the charge of Embezzlement in violation of CPC § 503 and the charge of Loud and Unreasonable Noise. *Id.* ¶ 4.

1 On or about April 22, 2013, U.S. Immigration and Customs Enforcement (“ICE”)
2 encountered Petitioner while conducting record checks on incarcerated individuals due to
3 his criminal arrest on April 21, 2013, and ICE lodged an Immigration Detainer. *Id.* ¶ 5. On
4 April 30, 2013, Petitioner was convicted in the Superior Court of California, Torrance, for
5 the misdemeanor offense of Taking a Vehicle Without Owner’s Consent, in violation of
6 California Vehicle Code (“CVC”) § 10851(A), and was sentenced to 20 days in jail and 3
7 years of probation. *Id.* ¶ 6. On or about May 2, 2013, the Immigration Detainer was
8 honored and ICE arrested Petitioner upon his release from jail. *Id.* ¶ 7. That same day, ICE
9 released Petitioner on an order of recognizance and served him with a Notice to Appear,
10 charging him as subject to removal pursuant to Immigration and Nationality Act (“INA”)
11 § 237(a)(1)(C)(i) as alien who failed to comply with the terms of his non-immigrant status.
12 *Id.* ¶ 8. On or about December 15, 2016, an IJ administratively closed the removal case
13 pursuant to DHS’ exercise of prosecutorial discretion (“PD”). *Id.* ¶ 9.

14 On July 25, 2024, Petitioner was convicted in Orange County Superior Court in
15 three separate driving under the influence (“DUI”) cases as follow:

- 16 • Case 22WM12169: two counts of the misdemeanor offenses of Driving Under
17 the Influence of Alcohol, one count in violation of CVC § 23152(A) and one
18 count of CVC § 23152(B). He was sentenced to 90 days of jail to serve
19 concurrently with sentences of other DUI cases. *Id.* ¶ 10.
- 20 • Case 23WM03119: two counts of the misdemeanor offenses of Driving Under
21 the Influence of Alcohol, one count in violation of CVC § 23152(A) and one
22 count of CVC § 23152(B). *Id.* ¶ 11.
- 23 • Case 23WM01793: two counts of the misdemeanor offenses of Driving Under
24 the Influence of Alcohol, one count in violation of CVC § 23152(A) and one
25 count of CVC § 23152(B). Sentenced to 90 days of jail to serve concurrently
26 with sentence for other DUI convictions on that day. *Id.* ¶ 12.

27 On September 6, 2024, Petitioner was convicted in the Orange County Superior
28 Court, case 24WF2063, for the felony offense of Driving under the Influence of Alcohol

1 With Prior DUI conviction, in violation of CVC §§ 23550 and 23152(A), for the felony
2 offense of Driving Under the Influence of Alcohol With Prior DUI conviction in violation
3 of violation of CVC §§ 23550 and 23152(B), and he was sentenced to 910 days in jail and
4 3 years of probation. *Id.* ¶ 13.

5 **B. Petitioner's Removal Proceedings**

6 On September 8, 2024, Petitioner was placed in removal proceedings and was
7 charged with failing to maintain non-immigrant status in which he was admitted pursuant
8 to INA §§ 237(a)(1)(C)(i). *Id.* ¶ 14. On September 11, 2024, the Department of Homeland
9 Security ("DHS") re-calendared Petitioner's case due to his multiple criminal convictions
10 (after the case was administratively closed in 2016 pursuant to DHS' exercise of
11 prosecutorial discretion). *Id.* ¶¶ 9, 15. On November 19, 2024, an IJ found Petitioner
12 removable as charged and Petitioner identified asylum, withholding of removal and relief
13 under the Convention Against Torture ("CAT") as relief from removal. *Id.* ¶ 16.

14 On December 2, 2024, an IJ denied Petitioner's request for bond pursuant to INA §
15 236(a), finding that Petitioner has not met his burden to show that he is not a danger to the
16 community. *Id.* ¶ 17. On or about January 2, 2025, Petitioner filed an appeal of the IJ's
17 bond decision with the BIA. *Id.* ¶ 19.

18 On February 11, 2025, Petitioner filed a Form I-589, application for asylum,
19 withholding of removal and relief under CAT. *Id.* ¶ 21. On March 19, 2025, an IJ denied
20 Petitioner's bond request pursuant to *Rodriguez v. Robbins*, 804 F.3d 1060 (9th Cir. 2015),
21 finding that DHS met its burden to show that Petitioner is a danger to the community. *Id.*
22 ¶ 22; Pet. at 2, Ex. C. At the hearing, the IJ denied Petitioner's bond request because the
23 government met its burden that if released, Petitioner would pose a danger to the
24 community due to extensiveness of recency of his DUI convictions. Pet. at 2, Ex. C.

25 On or about April 18, 2025, Petitioner filed an appeal of the IJ's decision denying
26 *Rodriguez* bond to the BIA. Torres Decl. ¶ 23. That appeal is pending. *Id.*

27 On May 14, 2025, the IJ denied Petitioner's asylum application because he did not
28 meet the requirement of filing the application within one year of entry to the United States.

1 Torres Decl. ¶ 24. The IJ also denied Petitioner’s application for withholding of removal
2 and relief under CAT because he did not suffer any harm in Turkey and he had not
3 demonstrated that he would suffer persecution or torture upon his return to Turkey. *Id.*

4 On June 5, 2025, the BIA dismissed Petitioner’s appeal of the IJ’s bond decision on
5 December 2, 2024. *Id.* ¶ 26. On or about July 12, 2025, Petitioner filed an appeal of the
6 IJ’s decision on his I-589 asylum application to the BIA. That appeal is currently pending.
7 *Id.* ¶ 27.

8 **III. STATUTORY AND REGULATORY BACKGROUND**

9 Congress enacted a statutory scheme that provides for the civil detention of
10 noncitizens during removal proceedings. *See Prieto-Romero v. Clark*, 534 F.3d 1053,
11 1059 (9th Cir. 2008). Where a noncitizen falls within this statutory scheme affects whether
12 his detention is discretionary or mandatory, as well as the kind of review process available
13 to him. *Id.* at 1057. The statutory authority of the Attorney General to detain a noncitizen
14 during removal proceedings, prior to a final order of removal, is found in 8 U.S.C. § 1226.
15 *See Jennings v. Rodriguez*, 138 S. Ct. 830, 837 (2018) (“Section 1226 generally governs
16 the process of arresting and detaining [deportable noncitizens present in the United States]
17 pending their removal.”).

18 Under 8 U.S.C. § 1226(a), the government may arrest and detain a noncitizen
19 “pending a decision on whether the [noncitizen] is to be removed from the United States.”
20 8 U.S.C. § 1226(a); *Diouf v. Napolitano*, 634 F.3d 1081, 1085 (9th Cir. 2011) (“At all
21 times before the removal period begins and mandatory detention is authorized by §
22 1231(a)(2), the [noncitizen] is subject to discretionary detention under § 1226(a).”). The
23 Attorney General¹ has the discretion to either (1) detain the noncitizen without bond or (2)
24 release the noncitizen on bond of at least \$1,500 or on conditional parole. 8 U.S.C. §
25

26 ¹ Although immigration detention authority was transferred from the Attorney
27 General to DHS, 6 U.S.C. § 251(2), immigration statutes have not been amended to reflect
28 this change. Much of the Attorney General’s authority has been transferred to the DHS
Secretary and many references to the Attorney General are understood to refer to the DHS
Secretary. *See Clark v. Martinez*, 543 U.S. 371, 374 n.1 (2005).

1 1226(a). Every noncitizen arrested under this subsection is individually considered for
2 release on bond. *See id.*; 8 C.F.R. § 236.1(c)(8). A U.S. Immigration and Customs
3 Enforcement (“ICE”) officer assesses whether the noncitizen has “demonstrate[d]” that
4 “release would not pose a danger to property or persons, and that the [noncitizen] is likely
5 to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8).

6 After the initial custody determination, the noncitizen may ask the IJ for a
7 redetermination of the custody decision. 8 C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d)(1).
8 The Ninth Circuit has recognized a bond hearing before an IJ as an opportunity for a
9 noncitizen to contest his detention “before a neutral decision maker.” *Prieto-Romero*, 534
10 F.3d at 1066, 1068. An IJ’s custody decision is reviewable by the BIA. *See* 8 C.F.R. §§
11 1003.1(b)(7), 1003.19(f), 1003.38.

12 **IV. ARGUMENT**

13 **A. The Court Lacks Jurisdiction under 8 U.S.C. § 1252.**

14 As a threshold matter, 8 U.S.C. §§ 1252(g) and (b)(9) preclude review of
15 Petitioner’s claims challenging the decision to take him into custody. Section 1252(g)
16 deprives courts of jurisdiction, including habeas corpus jurisdiction, to review “any cause
17 or claim by or on behalf of any alien arising from the decision or action by the Attorney
18 General to [1] *commence proceedings*, [2] *adjudicate cases*, or [3] *execute removal orders*
19 *against any alien under this chapter*.” 8 U.S.C. § 1252(g) (emphasis added). Section
20 1252(g) eliminates jurisdiction “[e]xcept as provided in this section and notwithstanding
21 any other provision of law (statutory or nonstatutory), including section 2241 of title 28,
22 United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of
23 such title.”² Except as provided in § 1252, courts “cannot entertain challenges to the
24 enumerated executive branch decisions or actions.” *E.F.L. v. Prim*, 986 F.3d 959, 964–65

25
26 ² Congress initially passed § 1252(g) in the IIRIRA, Pub. L. 104-208, 110 Stat.
27 3009. In 2005, Congress amended § 1252(g) by adding “(statutory or nonstatutory),
28 including section 2241 of title 28, United States Code, or any other habeas corpus
provision, and sections 1361 and 1651 of such title” after “notwithstanding any other
provision of law.” REAL ID Act of 2005, Pub. L. 109-13, § 106(a), 119 Stat. 231, 311.

1 (7th Cir. 2021).

2 Section 1252(g) also bars district courts from hearing challenges to the *method* by
3 which the DHS Secretary chooses to commence removal proceedings, including the
4 decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194, 1203
5 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s
6 discretionary decisions to commence removal” and to review “ICE’s decision to take
7 [plaintiff] into custody and to detain him during removal proceedings”).

8 **B. Petitioner Is Lawfully Detained Pending the Resolution Of His**
9 **Removal Proceedings.**

10 Petitioner cannot state a claim for habeas relief based on his detention pending the
11 resolution of his current removal proceedings. 8 U.S.C. § 1226(a) authorizes his detention
12 “pending a decision on whether [he] is to be removed from the United States” on the
13 current charge of removability. *Prieto-Romero*, 534 F.3d at 1059. The Supreme Court has
14 recognized that “detention during deportation proceedings [i]s a constitutionally valid
15 aspect of the deportation process.” *Demore v. Kim*, 538 U.S. 510, 523 (2003). “Detention
16 during [removal] proceedings gives immigration officials time to determine an
17 [noncitizen]’s status without running the risk of the [noncitizen]’s either absconding or
18 engaging in criminal activity before a final decision can be made.” *Jennings*, 138 S. Ct. at
19 836.

20 Petitioner’s current removal proceedings are ongoing and progressing. He has filed
21 an appeal of the IJ’s denial of a *Rodriguez* bond denial of his I-589 relief and both are
22 currently pending before the BIA. *See Soto v. Sessions*, 2018 WL 3619727, at *3 (N.D.
23 Cal. Jul. 30, 2018) (concluding “no specter of indefinite detention” where noncitizen is
24 detained under 8 U.S.C. § 1226(a) pending removal). Petitioner’s current detention
25 comports with due process. *See Prieto-Romero*, 534 F.3d at 1065 (finding no
26 constitutional violation in detention of more than three years under § 1226(a)). While
27 Petitioner may prefer to be out of ICE custody in the current removal proceedings,
28 Petitioner cannot establish a claim for habeas relief based on his detention pending the

1 resolution of his current removal proceedings.

2 **C. Petitioner’s Release Would Present a Danger to the Community.**

3 At a bond hearing, the government is required to prove by clear and convincing
4 evidence that an alien “is a flight risk or a danger to the community” to justify a denial of
5 bond. *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011). While “criminal history alone
6 will not always be sufficient to justify denial of bond...the recency and severity of the
7 offenses” must also be considered. *Id.* at 1206. Indeed, in *Perez v. Wolf*, 445 F. Supp. 3d
8 275 (N.D. Cal. 2020), the court has found that an alien with five DUIs presented a danger
9 to the community. *Id.* at 288. Moreover, *Perez* found that DUIs can form the basis of a
10 dangerous determination. *Id.* at 289. Here, like in *Perez*, Petitioner has multiple DUI
11 convictions, committed recently and *after* DHS has exercised its prosecutorial discretion
12 and paused removal proceedings. and had his most recent (fourth) DUI conviction shortly
13 before he was taken into immigration custody. *See* Torres Decl. ¶¶ 9-13. And like in *Perez*,
14 Petitioner’s most recent DUI was a felony, though he points out that it was not
15 “aggravated.” *Id.* ¶ 13. In total, Petitioner has been convicted of a crime on six separate
16 occasions between 2012 and 2024 – four of which occurred in 2024. *See id.* ¶¶ 3-6, 9-13.

17 **D. Petitioner Has Not Been Detained for an Abnormally Long Time.**

18 At the time this action was filed, Petitioner had been detained for approximately
19 seven months. *See* Pet. at 6. As of the filing of this motion, Petitioner has been detained
20 for one year—a period significantly shorter than what courts have found to constitute
21 unreasonably prolonged detention. Petitioner’s own complaint undercuts his argument that
22 continued detention is unlawful. First, he cites two Ninth Circuit cases to support his claim
23 that the government must demonstrate by clear and convincing evidence that continued
24 detention is justified. *See* Pet. at 6–7 (citing *Diouf*, 634 F.3d at 1086–91 (entitlement to
25 bond hearing); *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (requiring the
26 government to prove that detention is necessary to prevent danger to the community)).
27 Petitioner, however, received a *Rodriguez* bond hearing, as detailed above, and the IJ
28 determined in a March 19, 2025 order that the “Government has met their burden to

1 demonstrate that Respondent’s release . . . would pose a danger to the community.” *See*
2 Pet. Ex. C. This directly contradicts Petitioner’s assertion that he “has received none of
3 these protections.” *Id.* at 7.

4 Second, the Petition fails to support a claim of unreasonably prolonged detention.
5 Petitioner cites three unpublished cases from outside this District—each involving
6 detention periods longer than his own. *See* Pet. at 7 (citing *Gutierrez Cupido v. Barr*, 2019
7 WL 4861018, at *1 (W.D.N.Y. Oct. 2, 2019) (16 months); *Jamal v. Whitaker*, 358 F. Supp.
8 3d 853, 859 (D. Colo. 2019) (19 months); *Doe v. Beth*, 2019 WL 1923867, at *1 (E.D.
9 Wis. Apr. 30, 2019) (2.5 years)). Petitioner’s claim that “other courts across the country
10 have agreed that even shorter periods of detention without meaningful review can violate
11 due process” is unsupported. His current period of detention is materially shorter than the
12 detention periods in each of the cited cases.

13 Petitioner also alleges that “[t]he government has offered no evidence that [he]
14 presents a danger or is likely to abscond,” but Petitioner confirms that he has several
15 criminal convictions and is a repeated DUI offender. *See generally* Pet. Driving under the
16 influence naturally poses a danger and threat to society. Petitioner has been convicted of
17 DUI not just once, but *four* different times. *Id.*

18 **V. CONCLUSION**

19 For these reasons, Respondents respectfully request that the Court deny the habeas
20 petition and dismiss this action.

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Respectfully submitted,

Dated: September 15, 2025

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CERTIFICATE OF COMPLIANCE WITH L.R. 11-6.2

The undersigned, counsel of record for the Respondents, certifies that this brief contains 2,645 words, which complies with the word limit of L.R. 11-6.1.

Dated: September 15, 2025

/s/ Randy Hsieh
RANDY HSIEH