

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Sandra Milena Arateco Munoz,

Case No.: 25-CV-2951-MTL-ESW

Petitioner

**PETITIONER'S REPLY TO
RESPONDENTS' ANSWER TO
PETITION FOR WRIT OF HABEAS
CORPUS**

v.

Pamela Bondi, Attorney General; et al.,

**EXPEDITED HANDLING
REQUESTED**

Respondents.

INTRODUCTION

Petitioner, Sandra Milena Arateco Munoz, filed a petition for a writ of habeas corpus on August 15, 2025 alleging that she is being detained in violation of law. ECF No. 1. On September 3, 2025, the Court issued an Order to Show Cause ordering Respondents to state the true cause of Petitioner's detention within 20 days, and gave Petitioner 30 days from service of that response to file a reply. ECF No. 3. Respondents submitted their response on September 29, 2025. ECF No. 12. A document was filed on October 10, 2025 indicating that service was executed, though Petitioner denies having ever received the response. Assuming service was executed on October 10, 2025 (it is difficult to read the dates on the service executed document), this reply is timely under Fed. R. Civ. P. 6 (a)(1)(C). If service was executed prior to October 10, this reply is untimely and leave to file an untimely reply is requested in light of Petitioner having not actually received the response.

Important to this reply is the understanding that Petitioner was acting pro se when

she filed her habeas petition. Petitioner incorrectly asserted that her detention was governed by 8 U.S.C. § 1231. In reality, Petitioner's detention is governed by 8 U.S.C. § 1225(b). The undersigned requests that the Court liberally construe Petitioner's pro se habeas petition to present a constitutional due process challenge to prolonged and indefinite civil detention under 8 U.S.C. § 1225(b) without the opportunity for an individualized bond hearing. Petitioner would not object to a request by the government to file a sur-reply in light of accidental and good faith mischaracterization by Petitioner of the detention authority at issue in her case.

ARGUMENT

Here, there is no dispute that Petitioner is an arriving alien subject to mandatory detention under 8 U.S.C. § 1225(b). Rather, the dispute is over whether Petitioner, as an arriving alien, is entitled to a constitutionally protected due process right against unreasonably prolonged detention.

I. Petitioner is entitled to a bond hearing.

In *Jennings v. Rodriguez*, the Supreme Court held that the general immigration detention statutes, 8 U.S.C. §§ 1225(b), 1226(a), 1226(c), do not contain an implicit six-month limit on detention, and thereby overruled prior Ninth Circuit precedent that afforded detainees subject to detention under these statutes bond hearings every six months. 138 S. Ct. 830, 844–48 (2018). *Jennings*, however, held only that detained aliens are not statutorily entitled to periodic bond hearings. *See id.* *Jennings* did not determine the constitutional question at issue here—whether arriving aliens subject to prolonged detention under 8 U.S.C. § 1225(b) are entitled to a bond hearing as a matter of due

process. *See id.* at 138 S. Ct. at 851 (remanding for consideration of constitutional issues); *Rodriguez v. Marin*, 909 F.3d 252, 255 (9th Cir. 2018) (“The Court instead chose to answer only the question whether the statutory text itself included a limit on prolonged detention or a requirement of individual bond hearings.”); *see also Lett v. Decker*, 346 F. Supp. 3d 379, 383 (S.D.N.Y. 2018) (“The Supreme Court did not, however, determine whether arriving aliens facing prolonged detention are entitled to a bond hearing as a matter of constitutional Due Process.”); *Otis V. v. Green*, No. 18-742 (JLL), 2018 WL 3302997, at *6 (D. N.J. July 5, 2018) (“*Jennings* did not address ... [whether] those detained under the statute, as applicants for admission, possess some rights under the Due Process Clause which may be impugned should detention under the statute become unduly and unreasonably prolonged.”).

In *Zadvydas v. Davis*, the Supreme Court stated:

A statute permitting indefinite detention of an alien would raise a serious constitutional problem. The Fifth Amendment's Due Process Clause forbids the Government to deprive any person of liberty without due process of law. Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.

533 U.S. 678, 690 (2001) (alterations and quotations omitted); *see also id.* at 694–95 (declining to consider whether “subsequent developments have undermined *Mezei*'s legal authority” but noting that Congress' plenary power “is subject to important constitutional limitations.”).

On remand from *Jennings*, the Ninth Circuit emphasized that “arbitrary civil detention is not a feature of our American government” and expressed “grave doubts that

any statute that allows for arbitrary prolonged detention without any process is constitutional.” *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018). As such, the Court should find that the principles articulated in these decisions are highly indicative that the entry fiction doctrine does not trump the constitutional issues raised here. Indeed, various district courts have, post-*Jennings*, considered this very question and have similarly concluded, “agree[ing] that prolonged mandatory detention pending removal proceedings, without a bond hearing, will—at some point—violate the right to due process.” *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1116 (W.D. Wash. 2019) (quotation and citation omitted) (collecting cases).¹

In 2020, a judge in the Southern District of California, “guided by basic notions of due process gleaned from recent Supreme Court and Ninth Circuit case law, ... join[ed]

¹ *Djelassi v. ICE Field Office Dir.*, 434 F. Supp. 3d 917, 920 (W.D. Wash. 2020) (arriving alien detained for 18 months entitled to a bond hearing); *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1116 (W.D. Wash. 2019) (arriving alien detained for approximately 17 months granted a bond hearing); *Bermudez Paiz v. Decker*, No. 18-4759, 2018 WL 6928794, at *9–*10 (S.D.N.Y. Dec. 27, 2018) (arriving alien granted bond hearing after more than 16 months in detention); *Vargas v. Beth*, 378 F.Supp.3d 716, 724-29 (E.D. Wis. 2019) (continued detention of returning LPR subject to mandatory detention for over 9 months with no date set for appeal, and a colorable defense to removal violated due process); *Tuser E. v. Rodriguez*, 370 F.Supp.3d 435 (D.N.J. 2019) (due process requires individualized bond hearing and prolonged 19-month detention is unreasonable); *Jamal A. v. Whitaker*, 358 F.Supp.3d 853, 858 (D. Minn. 2019) (returning LPR arriving alien granted bond hearing after 19 months); *Pierre v. Doll*, 350 F.Supp.3d 327 (M.D. Pa. 2018) (requiring bond hearing for non-LPR in prolonged detention for almost 2 years); *Lett v. Decker*, 346 F.Supp.3d 379 (S.D.N.Y. 2018) (prolonged detention under § 1225(b) without a bond hearing for over 10 months violated due process); *Brissett v. Decker*, 324 F.Supp.3d 444, 449-52 (S.D.N.Y. 2018) (returning LPRs have constitutional rights); *Kouadio v. Decker*, 352 F. Supp. 3d 235, 241 (S.D.N.Y. 2018) (34-month detention without bond hearing violated Due Process Clause); *Perez v. Decker*, No. 18-CV-5279 (VEC), 2018 WL 3991497, at *6 (S.D.N.Y. 2018) (almost year-long detention is unreasonable and individual bond hearing required).

the majority of courts across the country in concluding that an unreasonably prolonged detention under 8 U.S.C. § 1225(b) without an individualized bond hearing violates due process.” *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. Nov. 4, 2020); *see also Yagao v. Figueroa*, No. 17-CV-2224-AJB-MDD, 2019 WL 1429582, at *2 (S.D. Cal. Mar. 29, 2019) (“[T]he Court agrees with the many district courts finding that prolonged detention without a bond hearing likely violates due process.”).

II. Petitioner’s detention is unreasonably prolonged.

Turning to the remaining question of whether Petitioner's detention has been unreasonably prolonged, courts in this district should apply the six-factor analysis in *Banda v. McAleenan* which considers:

- (1) total length of detention to date;
- (2) likely duration of future detention;
- (3) conditions of detention;
- (4) delays in the removal proceedings caused by the detainee;
- (5) delays in the removal proceedings caused by the government; and
- (6) the likelihood that the removal proceedings will result in a final order of removal.

385 F. Supp. 3d at 1106 (quoting *Jamal A. v. Whitaker*, 358 F. Supp. 3d 853, 858–59 (D. Minn. 2019)); *see Djelassi v. ICE Field Office Dir.*, 434 F. Supp. 3d 917, 920 (W.D. Wash. 2020) (applying the same test); *see also Gonzalez v. Bonnar*, No. 18-CV-05321-JSC, 2019 WL 330906, at *3 (N.D. Cal. Jan. 25, 2019) (applying a similar test).

The first factor weighs in Petitioner’s favor, as she has been detained since

December 2024, a period of 11 months.

The second factor also weighs in Petitioner's favor as her pending appeal to the BIA renders the length of her future detention unknowable. In the undersigned's experience, detained BIA appeals often take at least six months to get from filing to decision, indicating a likelihood of at least another four months of detention. If Petitioner prevails on her BIA appeal, the remedy will likely be a remand for further (detained) proceedings before the immigration judge. If there is another appeal from there, Petitioner could easily be looking at years of detention.

The third factor favors Petitioner. The conditions of her detention are indistinguishable from those found in criminal confinement contexts.

The fourth factor favors Petitioner. There is no indication in the record that Petitioner prolonged the proceedings before the immigration judge or BIA.

The fifth factor is neutral, except to the extent that the BIA (an arm of the government) is a slow moving agency that struggles to stay on top of its high case load. To that extent, the factor favors Petitioner.

The sixth factor is neutral because neither the undersigned, Respondents, nor the Court have any meaningful ability to forecast the outcome of Petitioner's pending administrative appeal at the BIA.

CONCLUSION

The Court must order an individualized bond hearing for Petitioner.

DATED: November 10, 2025

Respectfully submitted,

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