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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Sandra Milena Arateco Munoz

Petitioner

v.

Pamela Bondi, Attorney General; Kristi Noem, Secretary of Homeland Security; Todd M. Lyons, Acting Director of U.S. Immigration & Customs Enforcement; Marcos Charles, Acting Executive Associate Director for Enforcement and Removal Operations; Peter Berg, Field Office Director for Enforcement and Removal Operations; U.S. Immigration & Customs Enforcement; U.S. Department of Homeland Security; Joel Brott, Sherburne County Sheriff.

Respondents.

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

PETITIONER'S OBJECTIONS TO THE MAGISTRATE'S REPORT & RECOMMENDATION

EXPEDITED HANDLING REQUESTED

INTRODUCTION

On November 10, 2025, at 4:10 PM Mountain Standard Time ("MST"), the magistrate issued a Report & Recommendation ("R&R") recommending denial of Petitioner's habeas petition. At the exact same date and time, down to the minute,

Petitioner, through the undersigned counsel, filed a reply to the government's response to Petitioner's petition for a writ of habeas corpus. [1] Petitioner's reply included an affidavit from Petitioner stating that she had never received the government's response. *See* ECF No. 15-1. The reply also included a request from counsel for leave to file the reply out of time to the extent the reply was in fact out of time (also noting that the service document's date of service is "difficult to read" on the face of the document). *See* ECF No. 15 at 1 (referencing ECF No. 13).

The undersigned also now notes that ECF No. 13's certificate indicates that the government's response was never actually mailed to Petitioner, but was instead mailed to the government. *See* ECF No. 13. The tracking number for the return receipt indicates that the tracking number ending in 2321 was delivered to Washington DC on September 10, 2025, and the other tracking number ending in 3911 49 is an invalid tracking number. The signature section in the righthand corner is unsigned. To the extent ECF No. 13 was supposed to represent certified mailing of the government's response to Petitioner (if at all), there appears to be no valid indication that the government's response was ever actually delivered to Petitioner, who remains incarcerated and who was unrepresented until very recently. While the undersigned acknowledges that the government submitted a certificate of service indicating U.S. First Class Mailing to Petitioner on Sept. 29, 2025 (ECF No. 12 at 7), there is no tracking number provided and the fairly weak presumption

[1] Petitioner requests that the Court take judicial notice of the PACER timestamps relating to ECF Nos. 14 and 15 to confirm these statements. *See* Fed R. Evid. 201(b)(2), (c)(2).

of delivery by First Class Mail has been rebutted by Petitioner's affidavit (ECF No. 15-1).

The foregoing is important in this context of this objection to the magistrate's R&R because Petitioner's reply included a number of arguments that the magistrate did not consider, and which Petitioner believes requires reversing the R&R and granting the habeas petition. *See* ECF No. 15-1. Counsel also noted:

> 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.

ECF No. 15 at 1-2 (emphasis added). To the extent Petitioner may have waived these arguments by failing to timely present them to the magistrate, the foregoing demonstrates that the waiver was unintentional and the result of lack of actual delivery of the response combined with Petitioner proceeding pro se and being incarcerated. As such, the district judge must consider the arguments Petitioner made in her reply brief, which was filed simultaneously with the R&R recommending denial of the habeas petition.

Because the magistrate erred, pursuant to Fed. R. Civ. P. 72(b), Petitioner objects and seeks entry of a new decision granting a writ of habeas corpus and ordering a bond hearing.

Because Petitioner's arguments made in her reply to the magistrate were never considered, and because those arguments provide the basis for granting relief and reversing the magistrate, they are copied and pasted below.

ARGUMENT

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).[2]

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] 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

[2] *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).

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 reject the magistrate's R&R and order an individualized bond hearing for Petitioner.

DATED: November 15, 2025

Respectfully submitted,

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