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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

D.D.,

Petitioner-Plaintiff,

v.

Chistopher J. LAROSE, Senior Warden, Otay Mesa Detention Center

Gregory J. ARCHAMBEAULT, Acting Field Office Director of San Diego Office of Detention and Removal, U.S. Immigrations and Customs Enforcement; U.S. Department of Homeland Security;

Todd M. LYONS, Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security;

Kristi NOEM, in her Official Capacity, Secretary, U.S. Department of Homeland Security; and

Pamela BONDI, in her Official Capacity, Attorney General of the United States;

Respondents-Defendants.

Case No. 3:25-cv-02581-BJC-JLB

PETITIONER'S REPLY TO RESPONDENTS' RESPONSE IN OPPOSITION TO PETITIONER'S HABEAS PETITION AND APPLICATION FOR TEMPORARY RESTRAINING ORDER

The Petitioner, Mr. D., respectfully submits the following reply to the Respondents' Response in Opposition to Petitioner's Habeas Petition and Application for Temporary Restraining Order.

I. ARGUMENT

A. The district court has jurisdiction to consider Mr. D.'s habeas petition.

This court has jurisdiction to grant Mr. D., a detainee in custody of the United States, habeas relief pursuant to 8 U.S.C. § 2241. The Respondents argument that 8 U.S.C. § 1252(g) deprives this Court of jurisdiction to hear Mr. D's claim has been rejected by multiple district courts within the Southern District of California. *See Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MMP, 2025 WL 2549431, at *4 (S.D. Cal. Sept. 3, 2025); *Gao v. LaRose*, No.: 25-cv-2084-RSH-SBC, 2025 WL 2770633, at *2 (S.D. Cal. Sept. 26, 2025). Furthermore, the Ninth Circuit has also rejected the proposition that § 1252(g) bars habeas challenges to immigration detention. *See Bello-Reyes v. Gaynor*, 985 F.3d 696, 700 n.4 (9th Cir. 2021).

Section 1252(g) provides that "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." As the Court in *Gao* noted, "The Supreme Court has interpreted the jurisdiction-stripping provision in Section 1252(g) provisions narrowly, limiting it to "three discrete actions": the "'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" 2025 WL 2770633, at *2 (quoting *Reno v. Am.-Arab Anti–Discrimination Comm.*, 525 U.S. 471, 482 (1999)). The Supreme Court later explained that it did not read §1252(g) "to sweep in any claim that can technically be said to 'arise from' the three listed actions of the Attorney General. Instead, we read the language to refer to just those three specific actions themselves." *Gao*, 2025 WL 2770633, at *2 (quoting *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018)). The district court, noting that the petitioner was merely seeking to review the legality of his detention under the Due Process Clause rather than relitigate the Immigration Judge's order

in his removal proceedings, concluded that the petitioner's claim is not barred by § 1252(g). *Gao*, 2025 WL 2770633, at *2. The district court added, "Respondents have not cited any authority in which a court was found to lack subject matter jurisdiction over such a habeas claim." *Id.*

In *Vasquez-Garcia*, the district court likewise determined that § 1252(g) should be read narrowly. 2025 WL 2549431, at *4. The district court reasoned,

> Section 1252(g) 'does not prohibit challenges to unlawful practices merely because they are in some fashion connected to removal orders.'" *Ibarra-Perez v. United States*, No. 24-631, at *18 (9th Cir. Aug. 27, 2025). Specifically, § 1252(g) does not bar due process claims. *Walters v. Reno*, 145 F.3d 1032, 1032 (9th Cir. 1998). "[The plaintiffs'] objective was not to obtain judicial review of the merits of their . . . proceedings, but rather to enforce their constitutional rights to due process in the context of those proceedings." *Id.* at 1052.

Id. The district court noted that the petitioners were not contesting the charges brought against them or the initiation of their removal proceedings, but rather they were seeking a bond hearing to determine their detention status during removal proceedings. *Id.* Because the petitioners were "enforcing their constitutional rights to due process in the context of removal proceedings—not the legitimacy of the removal proceedings or any removal order," the district court concluded that § 1252(g) did not apply. *Id.*

In the instant case, Mr. D does not challenge the Respondents' decision to commence removal proceedings against him, adjudicate his removal case, or to execute any removal order. Instead, Mr. D seeks to review the legality of his detention under the Due Process Clause and enforce his constitutional rights to due process in the context of removal proceedings. As the Ninth Circuit and the aforementioned district courts have determined, such actions are not barred under § 1252(g). Accordingly, this Court has jurisdiction to hear Mr. D's claims.

B. Mr. D. is likely to succeed on his constitutional claim for relief under the Due Process Clause.

1. As multiple courts in this district have held, noncitizens subject to mandatory detention under 8 U.S.C. § 1225(b) have a constitutional right under the Due Process Clause against prolonged mandatory detention.

"'It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.'" *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). Yet, the Respondents argue that Mr. D. has no due process rights other than those afforded to him by Congress because he is because he is subject to mandatory detention under 8 U.S.C. § 1225(b).[1] ECF 6 at pgs. 5-8. However, the two district courts within the Southern District of California that have addressed this argument have resoundingly rejected it. *See Gao*, 2025 WL 2770633, at *3; *Kydyrali v. Wolf*, 499 F. Supp. 3d 768 (S.D. Cal. Nov. 4, 2020). Indeed, in a decision dated September 26, 2025, Judge Robert S. Huie noted that most courts have rejected this argument.[2] *See Gao*, 2025 WL 2770633, at *3 (citing *Abdul-Samed v. Warden of Golden State Annex Det. Facility*, No. 25-cv-98-SAB-HC, 2025 WL 2099343, at *6 (E.D. Cal. July 25, 2025)); *see also Kydrali*, 499 F. Supp. 3d at 772 n. 2 (collecting cases).

[1] The Respondents claim that Mr. D. is detained under § 1225(b)(1)(B)(ii) rather than § 1225(b)(2). ECF 6 at 5. However, Section 1225(b)(1)(B)(ii), which provides for detention of noncitizens who have established a credible fear following an interview, does not apply in this case because Mr. D. was never given a credible fear interview. Rather, as the documents submitted by the Respondents show, Mr. D. was purportedly processed under 8 U.S.C. § 1182(f), *see* ECF 6, Exh 1, and was then provided with a more limited assessment for relief under the Convention Against Torture. *See* ECF 6, Exh 3. The Respondents also claim that Mr. D. is an "arriving alien;" however, that definition does not apply because the Respondent entered the United States without inspection. *See* 8 C.F.R. 1.2 (defining "arriving alien" as, *inter alia*, "an applicant for admission coming or attempting to come into the United States at a port-of-entry"). However, for the purpose of this Motion, the Court need not decide whether the Respondent is detained under § 1225(b)(1) or § 1225(b)(2). Both subsections impose mandatory detention, and the Supreme Court and Ninth Circuit have treated both subsections interchangeably. *See Jennings*, 1238 S. Ct. at 842-43; *Rodriguez v. Marin*, 909 F.3d 252 (9th Cir. 2018). While not an issue for the instant motion, Mr. D. asserts that the only applicable authority for his detention is 8 U.S.C. § 1226(a); however, Mr. D. concedes that the Board of Immigration Appeals and/or Attorney General's interpretation of these statutes, whether *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), or, as the Respondents' claim, *Matter of M-S-*, 27 I&N Dec. 509 (AG 2019), would subject him to mandatory detention.

[2] The Respondents cite to two decisions in the Western District of New York and one decision in Southern District of Texas which have held otherwise, but the Respondents have not identified any decision in this district or any other district court within the jurisdiction the Ninth Circuit that has accepted this position. *See* ECF 6 at p.7.

In *Kydrali*, Judge Anthony J. Battaglia determined that the government's argument "would not be constitutionally defensible" in light of recent Supreme Court and Ninth Circuit case law. 499 F. Supp. 3d at 770. The district court quoted the Supreme Court decision in *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), which 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.

Id. at 770-71. The district court also cited to the Ninth's Circuit's decision in *Rodriguez v. Marin*, 909 F.3d 252, 257 (9th Cir. 2018), which following remand from the Supreme Court in *Jennings* to consider whether the Due Process Clause prohibits prolonged mandatory immigration detention, left in place in a permanent injunction in the Central District of California requiring individualized bond hearings for noncitizens who have been detained for longer than six months, remarking:

> We have grave doubts that any statute that allows for arbitrary prolonged detention without any process is constitutional or that those who founded our democracy precisely to protect against the government's arbitrary deprivation of liberty would have thought so. Arbitrary civil detention is not a feature of our American government. "[L]iberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987). Civil detention violates due process outside of "certain special and narrow nonpunitive circumstances." *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001) (internal quotation marks and citation omitted).

Rodriguez, 909 F. 3d at 256-27; *Kydrali*, 499 F. Supp. 3d at 772.

The district court also found that the Respondents' reliance on the Supreme Court's 1953 decision in *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 207–09 (1953) was misplaced and distinguishable. *Kydrali*, 499 F. Supp. 3d at 772. On this point, the district court stated as follows:

> *Mezei* concerned an alien who, prior to filing his habeas petition, had already been permanently excluded from the United States on security grounds. 345 U.S. at 207, 73 S.Ct. 625 ("This case concerns an alien immigrant permanently excluded from the United States on security grounds but stranded in his temporary haven on Ellis Island because other

> countries will not take him back."). Unlike Mr. Mezei, Petitioner is not alleged to present national security concerns, has not been permanently excluded from the United States, and seeks a bond hearing prior to a conclusive decision on his application for admission. As such, the Court finds *Mezei* inapposite. *See Rosales-Garcia v. Holland*, 322 F.3d 386, 413–14 (6th Cir. 2003) (en banc) (noting that the *Mezei* Court is limited to the national security context in which it was decided); *Lett v. Decker*, 346 F. Supp. 3d 379, 386 (S.D.N.Y. 2018) ("*Mezei* may compel the conclusion that arriving aliens already excluded on national security grounds are not entitled to a bond hearing prior to their arranged deportation. However, *Mezei* does not compel the categorical conclusion that all arriving aliens may be subject to prolonged confinement without a bond hearing.").

Id. Additionally, as noted above, Mr. D., unlike the noncitizen in *Mezei*, is not an "arriving alien" because he was not charged with inadmissibility at a point of entry. *See* 8 C.F.R § 1.2.

After considering these arguments, the district court in *Kydrali* concluded, "guided by basic notions of due process gleaned from recent Supreme Court and Ninth Circuit case law, the Court joins 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." 499 F. Supp. 3d at 772.

In *Gao*, the district court held likewise, concluding, "This Court agrees with the majority position that a petitioner detained under Section 1225(b)(1) may assert a due process challenge to prolonged mandatory detention without a bond hearing." 2025 WL 2770633, at *3. The district court in *Gao* distinguished the Supreme Court's decision in *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103 (2020), which the Respondents rely on in this action, as follows:

> This Court likewise agrees with those district courts that interpret *Thuraissigiam* as circumscribing an arriving alien's due process rights to *admission*, rather than limiting that person's ability to challenge *detention. See A.L. v. Oddo*, 761 F. Supp. 3d 822, 825 (W.D. Pa. 2025) ("Nowhere in [Thuraissigiam] did the Supreme Court suggest that arriving aliens being held under § 1225(b) may be held indefinitely and unreasonably with no due process implications, nor that such aliens have no due process rights whatsoever."); *Hernandez v. Wofford*, No. 25-cv-986-KES-CDB (HC), 2025 WL 2420390, at *3 (E.D. Cal. Aug. 21, 2025) ("Although the Supreme Court has described Congress's power over the 'policies and rules for exclusion of aliens' as 'plenary,' and held that this court must generally 'defer to Executive and Legislative Branch decisionmaking in that area,' it is well-established that the Due Process Clause stands as a significant constraint on the manner in which the political branches may exercise their plenary authority'—through detention or otherwise.") (citations omitted); *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1171–72 (W.D. Wash.

> 2023) ("The holding in *Thuraissigiam* does not foreclose Plaintiffs' due process claims which seek to vindicate a right to a bond hearing with certain procedural protections.").

Gao, 2025 WL 2770633, at *3.

For the same reasons as described in *Gao* and *Kydrali*, the Court in this instant action should reject the government's contention that Mr. D. has no constitutional right against prolonged detention. Such a position would not only create a split within this district, and more broadly among district courts within the Ninth Circuit, but it would also be inconsistent with Ninth Circuit's and Supreme Court's respective decisions in *Rodriguez* and *Zadvydas*, as discussed above. This Court should instead join the vast majority of district courts that have held that noncitizens who are subject to mandatory detention under § 1225(b) have a due process right against prolonged detention without an individualized bond hearing.

2. The facts of Mr. D.'s case demonstrate that his detention has become prolonged in violation of the Due Process Clause.

Mr. D. has been detained for over seven months with no clear end in sight as a result of multiple lengthy delays caused by the government. Yet, the Respondents argue that Mr. D.'s detention has not become so unreasonable as to require an initial bond hearing. ECF 8 at pgs. 8-9. For reasons discussed below, the Respondents' argument misses the mark.

First, the Respondents suggest that Mr. D. has not been detained long enough because petitioners in certain other cases where district courts have granted relief have been detained longer.[3] *See* ECF 6 at p.8. However, Mr. D. has now been detained for over seven months in a private for-profit prison under conditions that district courts within this district have described as "not dissimilar to criminal confinement" *Gao*, 2025 WL 2770633, at *3, and "indistinguishable from penal confinement." *Kydrali*,

[3] The Respondents cite to one decision by a district court within this district which stated, "In general, as detention continues past a year, courts become extremely wary of permitting continued custody absent a bond hearing." ECF 6 at p.8 (citing *Sibomana v. LaRose*, No. 22-cv-933-LL-NLS, 2023 WL 3028093, at *4 (S.D. Cal. Apr. 20, 2023)). However, the inverse is not necessarily true. In fact, the district court in *Gao* granted relief for a petitioner who was detained for around ten months. *See* 2025 WL 2770633, at *4-5.

499 F.Supp.3d at 773 (quoting *Jamal A. v. Whitaker*, 358 F. Supp. 3d 853, 858–59 (D. Minn. 2019)). Moreover, as noted above, the Ninth Circuit, following remand from the Supreme Court to determine the constitutional question, left in place an injunction that requires individualized bond hearings for detainees within the Central District of California once their detention passes the six-month mark, citing "grave" constitutional concerns. *See Rodriguez*, 909 F.3d at 256. Similarly, in *Zadvydas*, the Supreme Court, noting that "there is reason to believe that [Congress] doubted the constitutionality of more than six months detention," determined that the six-month mark was the appropriate period of time when detention would become presumptively unreasonable in the post-removal order context. 533 U.S. at 680. In the Northern District of California, a district court applied a bright line six-month rule as the length of time when detention without a bond hearing becomes prolonged under the Due Process Clause. *Rodriguez v. Nielsen*, 2019 WL 7491555, at *6 (N.D. Cal. Jan. 7, 2019). Even if this Court declines to adopt a bright line rule, the Court should find that detention in excess of six months is a factor weighing in the petitioner's favor. A contrary determination would produce an anomalous result where detainees in the Central and Northern Districts of California are afforded bond hearings at the six-month mark, but detainees in Southern District have to wait a longer, but unspecified amount of time before their detention becomes unconstitutional, leaving detainees to guess how long is too long. Consistent with the authorities cited above, the Court should find that Mr. D.'s detention in excess of seven months is a factor that weights in his favor in determining whether his detention has becomes prolonged.

The Respondents also argue that the anticipated length of Mr. D's detention does not raise due process concerns, noting that Mr. D. is scheduled for an individual hearing on his applications for relief on November 7, 2025 and claiming that "[t]here is no indication that any final decision by the IJ would be delayed." ECF 6 at pgs. 8-9. However, absent intervention from this Court, there is substantial reason to believe that Mr. D's detention will last much longer. First, contrary to the government's assertion,

delays in issuing a decision following individual hearings are quite common. *See* ECF 2-1 at ¶ 21. Second, regardless of the result of the hearing on November 7th, it is likely that either side (or both) will appeal to the Board of Immigration Appeals. Mr. D. fully intends to appeal any adverse ruling against him, and the Department of Homeland Security may also file an appeal if Mr. D. is granted relief. *Id.* at ¶ 22. Such an appeal would likely last six months or longer, and the case could be delayed for an additional period of time if the case is further appealed to the Ninth Circuit or remanded back to the Immigration Court for more proceedings. *See id.* Indeed, the lengthy time associated with appeals has been a major factor that other district courts in this district have considered when analyzing the total anticipated length of detention. *See Durand v. Allen*, 2024 WL 711607, at *5 (S.D. Cal. Feb. 21, 2024); *Sibomana*, WL 302809, at *4; *Sanchez-Rivera v. Matuszewski*, 2023 WL 139801, at *6 (S.D. Cal. Jan. 9, 2023). Yet, in their response in opposition, the government failed to address this factor. Given that Mr. D. could remain detained for months if not years while his proceedings remain pending, the anticipated length of detention is another factor that weighs strongly in Mr. D.'s favor.

Finally, the Respondents claim that "there is no indication of any delay in the removal proceedings by the government." ECF 6 at p.9. However, the Respondents do not address the more than three-month delay that occurred between the day Mr. D was detained on March 2, 2025 and the date of his first hearing on June 16, 2025. ECF 2-1 at ¶¶ 4-9. Nor do the Respondents address the multiple delays that were caused by multiple continuances ordered by the Immigration Judge over the Summer of 2025. *Id.* at ¶¶ 11-18. The Respondents have also not provided an explanation as to why the parole requests submitted by Mr. D's counsel never received a response. *Id.* at ¶¶8, 13. The district court in *Gao* considered this to be a favor weighing in favor of the petitioner in that case. *See* 2025 WL 2770633, at *4 ("Although Petitioner has since made two requests for parole, in December 2024 and in August 2025, there is no evidence that he has received any response or determination on those requests. At the hearing, Respondent's counsel

did not provide any explanation for this lack of response."). As such, the government caused delays in this case also weigh in Mr. D's favor.

In sum, Mr. D has been detained in excess of seven months in prison-like conditions with significant delays caused by the government and no end to his detention in sight. Under such circumstances, Mr. D is likely to succeed on his claim that his detention without an individualized bond hearing has become prolonged in violation of the Due Process Clause.

C. Mr. D has shown irreparable harm from the ongoing deprivation of his constitutional rights.

As the Ninth Circuit has held, "It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). As shown above, Mr. D is being subject to prolonged detention in violation of his right to due process; thus, he has "unquestionably" established irreparable injury in this case. While the Respondents claim that any alleged harm "is essentially inherent in detention,"[4] ECF 6 at p.9, the Ninth Circuit has recognized in "concrete terms the irreparable harms imposed on anyone subject to immigration detention" including "subpar medical and psychiatric care in ICE detention facilities." *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017). The Respondents also fail to address any of the individualized harm that Mr. D is experiencing in detention, such as physical ailments, post-traumatic stress disorder, and anxiety and depression. *See* ECF 2 at p.12. Moreover, as the Ninth Circuit has explained, "[I]t follows inexorably from our conclusion that the government's current policies are likely unconstitutional—and thus that [Petitioners] will likely be deprived of their physical

[4] The Respondents cite to magistrate decision from the Northern District of California, see *Lopez Reyes v. Bonnar*, No 18-cv-07429-SK, 2018 WL 747861 at *10 (N.D. Cal Dec. 24, 2018), however, the district court judge later found there was irreparable harm in that case and granted the temporary restraining order. *See Lopez Reyes v. Bonnar*, 362 F. Supp. 3d 762, 778 (N.D. Cal. 2019) ("If Petitioner can demonstrate that he is not a current danger to society, then every day he remains in custody without an opportunity to make this showing at a bond hearing causes him irreparable harm.").

liberty unconstitutionally in the absence of the injunction—that [Petitioners] have also carried their burden as to irreparable harm." *Hernandez*, 872 F.3d at 995; *see also Garcia-Vasquez*, 2025 WL 2549431, *7 (finding irreparable harm in the habeas context based on unlawful immigration detention). Thus, Mr. D has shown irreparable harm from the ongoing violation of his right to due process.

C. The balance of equities and public interest favor granting a temporary restraining order.

As Mr. D has shown a violation of his right to due process, "it would not be equitable or in the public's interest to allow [a party] . . . to violate the requirements of federal law, especially when there are no adequate remedies available." *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (quoting *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013)). Further, as multiple district courts in this district have held, "The public interest in enforcement of immigration laws, although significant, does not override the public interest in protecting the safeguards of the Constitution." *Domingo-Ros v. Archambeault*, 2025 WL 1425558, at *5 (S.D. Cal. May 18, 2025); *Garcia-Vasquez*, 2025 WL 2549431, *7. Thus, these factors also favor Mr. D.

II. CONCLUSION

For the foregoing reasons, and those stated in Mr. D's motion for a temporary restraining order, this Court should grant Mr. D's motion and enjoin the Respondents from continuing to detain Mr. D unless they provide him within 14 days an individualized bond hearing at which the government bears the burden of proof to establish by clear and convincing evidence that his detention is justified because he is either a flight risk or a danger to the community.

Respectfully submitted this 10th day of October, 2025.

By counsel,

s/ Warren Craig
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CERTIFICATE OF SERVICE

I hereby certify that on October 10, 2025, I electronically filed the foregoing document using the CM/ECF system, which will serve counsel for the Respondents.

Dated: 10/10/2025

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