

1 Chuangchuang Chen (CA Bar #349114)
19209 Colima Rd, Ste E
2 Rowland Heights, CA 91748
3 Telephone: (909)969-6666
4 Fax Number: (909)969-6666
5 Email: Layerchchch@gmail.com

6 *Attorney for Petitioner*

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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 FANJUN CONG,

11 *Petitioner,*

12 v.

13 KRISTI NOEM, Secretary, Department
14 of Homeland Security; PAM BONDI,
15 Attorney General; TODD LYONS,
16 Executive Associate Director of ICE
17 Enforcement and Removal Operations
18 (ERO); GREGORY J.
19 ARCHAMBEAULT, Director, San
20 Diego Field Office, Immigration and
Customs Enforcement; CHRISTOPHER
J. LAROSE, Warden, Otay Mesa
Detention Center.,

21 *Respondents.*

Case No.: 25-cv-3730-GPC-DEB

PETITIONER TRAVERSE

1 Petitioner, Fanjun CONG, respectfully submits this traverse in response to the
2 Government's return to the Petition for Writ of Habeas Corpus. The Government asserts that
3 Petitioner's claims and requested relief are barred by 8 U.S.C. § 1252, but this assertion is both
4 legally and factually incorrect. The Government's reliance on *Jennings v. Rodriguez* and
5 *Thuraissigiam v. United States* is also misplaced. Petitioner does not seek judicial review of a
6 decision to commence or adjudicate removal proceedings or execute a removal order. Instead,
7 Petitioner challenges the prolonged detention under the Constitution and the Immigration and
8 Nationality Act (INA), which does not bar habeas corpus relief for individuals who have been
9 detained for an unreasonable period without meaningful custody determinations.

10 **Response to the Government's Assertions**

11 **I. Respondent's Prolonged Detention is Not Justified Under the Constitution or INA**

12 The Government claims that Petitioner's relief is barred by 8 U.S.C. § 1252, stating that
13 courts lack jurisdiction to review decisions to commence or adjudicate removal proceedings or
14 execute removal orders. However, this claim is incorrect. Petitioner is not seeking judicial review
15 of the decision to commence or adjudicate removal proceedings or the execution of removal
16 orders. Rather, Petitioner is challenging the prolonged detention, which is no longer justified
17 under both the Constitution and the Immigration and Nationality Act (INA).

18 Petitioner has been detained for over six months following an expedited removal order.
19 The Immigration Judge ("IJ") declined jurisdiction over the custody determination, citing *Matter*
20 *of M-S-*, 27 I&N Dec. 509 (A.G. 2019), and dismissed Petitioner's request for a bond hearing
21 without reaching the merits. As a result, Petitioner has never received a meaningful custody
22 determination by a neutral decisionmaker. Petitioner's detention has become indefinite, with no
23 foreseeable end in sight. This prolonged and indefinite detention violates Petitioner's
24 constitutional rights to due process and is inconsistent with the purpose of the INA.

25 Furthermore, the INA does not prohibit federal courts from reviewing habeas corpus
26 petitions related to individuals who are being prolongedly detained. The government's claim that
27 this Court lacks jurisdiction is inconsistent with established precedent, which recognizes the right
28 to challenge unlawful detention, especially when that detention becomes indefinite and lacks
procedural safeguards.

II. Response to the Government's Assertions Regarding Due Process

The Government argues that Petitioner's Fifth Amendment due process claims fail on the merits, citing *Jennings v. Rodriguez*, 583 U.S. 281 (2018), and *Thuraissigiam v. United States*, 591 U.S. 107 (2020). While the Government correctly identifies these cases, its reliance on them to argue that Petitioner's detention is constitutional is misplaced. In *Jennings v. Rodriguez*, the Court explicitly declined to rule on the constitutional due process implications of prolonged, potentially indefinite detention without a bond hearing (i.e., a "meaningful custody determination by a neutral decisionmaker"), remanding that issue to the Ninth Circuit for consideration.

On remand from the Supreme Court's decision in *Jennings v. Rodriguez*, the Ninth Circuit issued its ruling in *Rodriguez v. Marin*, 909 F.3d 252 (9th Cir. 2018). The Ninth Circuit affirmed that the district court had jurisdiction to hear the habeas claims, rejecting the government's arguments that provisions like §§ 1226(e), 1252(b)(9), and 1252(f)(1) barred review. The court clarified that challenges to the constitutionality of the overall detention scheme (rather than individual removal orders or discretionary decisions) were permissible.

Additionally, *Thuraissigiam* dealt with the procedural due process rights of inadmissible arriving noncitizens and clarified that such individuals have no additional due process protections beyond those afforded by statute. However, *Thuraissigiam* is distinguishable because it did not address the scenario where a petitioner has been detained for over six months without a meaningful bond hearing or custody review by a neutral decisionmaker. The constitutional concern in *Thuraissigiam* was not about indefinite detention without meaningful review, but rather about the scope of due process rights for arriving noncitizens at the time of their initial detention.

III. The Absence of Meaningful Review of Detention Violates Due Process

Even assuming the Government's interpretation of *Jennings* and *Thuraissigiam* is correct, those cases do not eliminate Petitioner's constitutional right to challenge his prolonged and indefinite detention. The lack of a meaningful bond hearing or custody review violates due process and makes Petitioner's continued detention unconstitutional. The Government has failed

1 to provide any justification for why Petitioner’s detention, which has now been prolonged for
2 over six months, is reasonable or necessary.

3 Petitioner has been denied a bond hearing despite his clear ties to the community, his lack
4 of criminal history, and his strong likelihood of appearing for any future proceedings. The
5 absence of any procedural safeguards to assess flight risk or danger, especially given the
6 prolonged nature of the detention, underscores the constitutional violation at hand.

7 **IV. Conclusion**

8 For all the reasons stated, Petitioner respectfully requests that this Court grant the Petition
9 for Writ of Habeas Corpus and order Petitioner’s release from detention.

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11 DATED: January 6, 2026

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13 Respectfully submitted,

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16 /s/ Chuangchuang CHEN
17 Chuangchuang Chen, Esq.
18 *Counsel for Petitioner*
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