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9
10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF CALIFORNIA**

12 **DMITRII MARKOV,**

13 Petitioner,

Case No. 25-cv-03811-JLS-SBC

14 v.

**PETITIONER’S TRAVERSE
TO RESPONDENTS’ RESPONSE
TO PETITION FOR WRIT OF
HABEAS CORPUS**

15
16 **CHRISTOPHER J. LAROSE, Field Office Director,**
17 **U.S. Immigration and Customs Enforcement,**
18 **San Diego Field Office, *et al.*,**
19 Respondents.

20
21 **I. INTRODUCTION**

22 Respondents, in their Response to Petition for Writ of Habeas Corpus dated
23 December 31, 2025, argue that this Court lacks jurisdiction and that Petitioner’s
24 continued detention without a bond hearing is lawful because it is mandated by statute.
25 Both arguments are incorrect.
26

Petitioner does not challenge the Government’s decisions to commence removal proceedings or any removal order. He challenges only the constitutionality of his

1 prolonged civil detention without meaningful process. Binding Ninth Circuit authority
2 confirms that such claims fall squarely within this Court’s habeas jurisdiction.

3
4 Furthermore, even where detention is initially mandatory under 8 U.S.C. § 1225(b), due
5 process imposes limits on the duration of the detention. Those limits have been exceeded
6 in this case.

7
8 **II. THIS COURT HAS JURISDICTION OVER PETITIONER’S HABEAS CLAIM**

9
10 **A. Section 1252(g) Does Not Bar Custody-Only Habeas Claims**

11 Respondents contend that 8 U.S.C. § 1252(g) strips this Court of jurisdiction because
12 Petitioner’s detention “arises from” the commencement of removal proceedings. The
13 Ninth Circuit has repeatedly rejected this interpretation. While 8 U.S.C. § 1252(g)
14 narrowly limits judicial review of certain prosecutorial decisions to commence,
15 adjudicate, or execute removal proceedings, it does not bar habeas review of
16 constitutional challenges to immigration detention itself. Under binding Ninth Circuit
17 precedent, this Court retains jurisdiction to adjudicate Petitioner’s habeas challenge to his
18 continued and prolonged detention notwithstanding the commencement of removal
19 proceedings.
20
21

22 Respondents’ reliance on *Wang v. United States*, No. CV 10-0389 SVW (RCx), 2010 WL
23 11463156 (C.D. Cal. Aug. 18, 2010) is misplaced and non-binding. *Wang* involved a tort-
24 based false imprisonment claim for damages under the Federal Tort Claims Act, not a
25 habeas petition seeking release for ongoing civil detention. *Wang* was a district court
26 decision and not binding law, and therefore does not set any precedent within the same
district or this Court. While Respondents cite *Wang* for the proposition that 8 U.S.C. §
1252(g) bars review of custody claims arising after the commencement of removal

1 proceedings, that decision should be given limited persuasive value. Binding Ninth
2 Circuit rulings demonstrate that 8 U.S.C. § 1252(g) does not bar habeas challenges to the
3 lawfulness of detention itself.
4

5 In *Sissoko v. Rocha* 509 F.3d 947, 950-51 (9th Cir. 2007), the Ninth Circuit expressly
6 rejected the argument that 8 U.S.C. § 1252(g) bars judicial review of detention claims
7 merely because detention follows the commencement of removal proceedings. The court
8 clarified that 8 U.S.C. § 1252(g) applies only to the Government’s discretionary decisions
9 to “commence proceedings, adjudicate cases, or execute removal orders,” and does not
10 strip court of jurisdiction over challenges to “the legality of detention itself.” *Id.* At 950.
11 Contrary to the Respondents’ assertions, *Sissoko* supports - rather than undermines - this
12 Court’s jurisdiction over the matter at hand. The court in *Sissoko* references *Khorrami v.*
13 *Rolince*, 493 F. Supp. 2d 1061, 1068-69 (N.D. Ill. 2007) citing “Aliens wishing to raise
14 [constitutional] challenges in the future should do so either in a petition for review or
15 habeas corpus.”) *Id.* The available remedy of a habeas corpus petition to challenge the
16 constitutionality of detention is afforded to individuals under 8 U.S.C. § 1252(g).
17

18
19 Otherwise, if this Court would lack jurisdiction, there would be no higher court remedy
20 available to any individual who simply has removal proceedings commenced against
21 them - as incorrectly laid out by the Respondents’ arguments.
22

23
24 Furthermore, the Ninth Circuit in *Sissoko* interpreted 8 U.S.C. § 1252(g) narrowly,
25 relying on the approach adopted in *Humphries v. Various Federal USINS Employees*,
26 where the Fifth Circuit held that claims arising from mistreatment during detention do not
“arise from” the commencement of removal proceedings, even when detention is
statutorily mandated. 509 F.3d. 947, 950-51 (9th Cir. 2007) (citing *Humphries*, 164 F.3d

1 936, 944–45 (5th Cir. 1999)). The court distinguished cases such as *Foster v. Townsley*,
2 where claims were barred because they directly challenged *prosecutorial* decisions to
3 execute removal orders, emphasizing that detention decisions merely follow from—but
4 do not contribute to—the decision to commence proceedings. *Id.* Guided by
5 constitutional-avoidance principles and Supreme Court precedent cautioning against
6 construing jurisdiction-stripping statutes to foreclose review of colorable constitutional
7 claims, the court rejected a “but for” causation theory that would insulate detention from
8 judicial review. *Id.* (citing *Webster v. Doe*, *INS v. St. Cyr*, and *Demore v. Kim*).

9
10 Accordingly, the Ninth Circuit held that detention pending removal, mandatory or
11 otherwise, does not “arise from” the decision to commence removal proceedings within
12 the meaning of § 1252(g), and therefore remains subject to habeas review.
13

14
15 Accordingly, Respondents’ jurisdictional argument fails, and this Court properly retains
16 jurisdiction to consider the merits of Petitioner’s habeas challenge to his continued and
17 prolonged detention.
18

19 **III. JENNINGS v. RODRIGUEZ DOES NOT FORECLOSE PETITIONER’S**
20 **CLAIM**

21
22 Respondents rely heavily on *Jennings v. Rodriguez*, 583 U.S. 281 (2018), but Jennings
23 addressed only whether the Immigration and Nationality Act (“INA”) could be statutorily
24 construed to require periodic custody redetermination hearings. The Supreme Court
25 expressly declined to resolve the constitutional question, remanding for consideration of
26 as-applied due process challenges. *Id.* At 309.

Post-*Jennings*, courts in this Circuit consistently recognize that constitutional challenges
to prolonged detention remain viable, including for individuals detained under § 1225(b).

1 See, e.g. *Rodriguez Diaz v. Garland*, 53 F4th 1189, 1205-06 (9th Cir. 2022) (confirming
2 that Jennings left constitutional claims open).

3
4 Respondent in this case has been detained by the Respondents since January 13, 2025, an
5 ongoing (12) twelve months of detention. The court in *Rodriguez-Diaz* in applying the
6 framework from *Mathews v. Eldridge*, 424 U.S. 319 (1976), the Supreme Court's and
7 Ninth Circuit's due process precedents recognize that prolonged civil detention requires
8 heightened procedural safeguards. Once an individual has been detained for (6) six
9 months, due process demands a new bond hearing at which the Government bears the
10 burden of justifying continued detention by clear and convincing evidence. See
11 *Addington v. Texas*, 441 U.S. 418, 427 (1979); *Demore v. Kim*, 538 U.S. 510, 529 (2003);
12 *Singh v. Holder*, 638 F.3d 1196, 1203–04 (9th Cir. 2011). In *Rodriguez Diaz v. Garland*,
13 the Ninth Circuit held that because the petitioner had been detained for fourteen months
14 since his initial bond hearing, he was constitutionally entitled to another bond hearing
15 under this heightened standard, with the burden squarely on the Government. The same
16 due process principles apply here, where detention has extended well beyond six months
17 without adequate procedural protections. Respondent has no criminal history and has
18 been detained unconstitutionally. Although Petitioner appeared before an Immigration
19 Judge on December 5, 2025, that bond hearing did not provide meaningful process
20 because the Immigration Court denied bond solely on the ground that it lacked
21 jurisdiction over arriving aliens, not based on any individualized assessment of flight risk
22 or danger. Under the *Mathews* balancing framework, due process in these circumstances
23 require the burden to be shifted to the Government.
24
25
26

1 Thus, *Jennings* does not resolve - let alone defeat - Petitioner's claim. Because Petitioner
2 has been detained for well over a year without procedural safeguards, due process
3 requires that he be afforded a bond hearing consistent with constitutional standards.
4

5 **IV. PETITIONER'S CONTINUED DETENTION HAS BECOME**
6 **CONSTITUTIONALLY UNREASONABLE AND SUBJECT TO DUE PROCESS**
7 **LIMITATIONS**
8

9 A. Mandatory Detention is Subject to Due Process Limitations
10

11 Although § 1225(b)(1) mandates detention at the outset, mandatory detention does not
12 authorize indefinite periods of detention without due process. *Zadvydas v. Davis*, 533
13 U.S. 678 at 687-688 (2001). The court in *Zadvydas* further held that "A statute permitting
14 indefinite detention would raise serious constitutional questions. Freedom from
15 imprisonment lies at the heart of the liberty protected by the Due Process Clause.
16 Government detention violates the Clause unless it is ordered in a criminal proceeding
17 with adequate procedural safeguards or a special justification outweighs the individual's
18 liberty interest." *Id.* At 690-692.
19

20
21 The court in *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 referenced that
22 "which an alien was indefinitely detained as he attempted to reenter the country - does
23 not support the Government's argument that alien status itself can justify indefinite
24 detention. Once an alien enters the country, the legal circumstances change, for the Due
25 Process Clause applies to all persons within the United States, including aliens, whether
26 their presence is lawful, unlawful, temporary, or permanent." The Respondents argue that
the statute triggers mandatory detention, essentially an indefinite period of detention

1 which would be subject to review for Due Process violations. Respondents' argument
2 under *Shaughnessy* is misapplied to this case.

3
4 Respondents argue that 11.5 months is not "prolonged detention". Respondents further
5 argue that "Courts in this district have found detention for much longer periods to be
6 unreasonably prolonged" citing unpublished opinions from *Durand v. Allen*, No. 3:23-
7 cv-00279-RBM-BGS, 2024 WL 711607 at *5 (S.D. Cal. Feb. 21, 2024). However, in the
8 Ninth Circuit, courts apply a reasonableness test to prolonged § 1225(b) detention
9 matters. Pursuant to *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022), courts
10 do not only look at the length of detention by itself, but also the likely duration of future
11 detention, and the extend to which delays are attributable to the Government or the
12 petitioner. In this case, Petitioner's final merits hearing was postponed several times that
13 is attributed to the Government. His initial hearing was scheduled for May of 2025, then
14 rescheduled (5) five times, with the next hearing changing to a Master Calendar hearing
15 instead. This prolonged detention has been attributed to the Government - not the
16 Petitioner and his detention period has become indefinite, and unknown.

17
18
19
20 Petitioner's detention is certain to continue. Especially with no merits hearing being
21 scheduled. Balancing these factors in *Lopez*, Petitioner's continued detention without a
22 procedurally adequate bond hearing has become unconstitutionally prolonged, indefinite,
23 and a violation of his due process rights.

24
25 **V. THURAISSIGIAM DOES NOT APPLY HERE NOR CONTROL THIS CASE**
26

Respondents rely on *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103
(2020) but it does not apply in this case. *Thuraissigiam* concerned the scope of judicial
review of expedited removal determinations, not prolonged civil detention - which is the

1 issue at hand in this case. The case in *Thuraissigiam* concerned an alien seeking a second
2 opportunity to apply for asylum and judicial reviews of expedited removal orders.

3
4 Nothing in *Thuraissigiam* addressed whether months or years long detention without a
5 bond hearing satisfies due process. Therefore, *Thuraissigiam* does not apply to this case.
6

7 **VI. CONCLUSION**

8
9 Petitioner's detention has become unconstitutionally prolonged, violates due process, and
10 is subject to habeas corpus review. -
11

12 **VII. RELIEF REQUESTED**

13
14 WHEREFORE, Petitioner respectfully requests that this Court grant the following relief:

- 15 1. Grant the Petition for Writ of Habeas Corpus;
16
17 2. Order Respondents to provide Petitioner with a prompt custody redetermination
18 hearing before an Immigration Judge, at which the Government bears the burden of
19 justifying continued detention;
20
21 3. In the alternative, order Petitioner's release under appropriate conditions.

22 Dated: January 6, 2026

23 Respectfully submitted,

24 /s/ John D. Shaw

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CERTIFICATE OF SERVICE

I hereby certify that on January 6, 2026, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record who are registered CM/ECF users.

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