

1 Magomed Esendirov, Esq. (CA SBN: 363301)
2 Musaev & Associates, PC
3 409 N Camden Dr., Suite 108
4 Beverly Hills, CA 90210
5 esendirov@musaev.com
6 tel: (424) 599-6556
7 EOIR ID: UU789283

8 *Attorney for Petitioner*

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

11 BAISANGUR GERMAKHANOV,
12 Petitioner,

13 v.

14 SIDNEY AKI, Current or Acting Field
15 Office Director, ICE San Diego Field
16 Office, et al.

17 Respondents.
18

Case No.: 26-cv-1397-BJC-VET
**PETITIONER’S REPLY TO
RESPONDENTS’ RETURN**

Judge: Hon. Benjamin J. Cheeks

19
20 **INTRODUCTION**

21 Respondents’ Return confirms the central allegation of the Petition: the government has
22 detained Baisangur Germakhanov for approximately nine months without ever affording him
23 an individualized bond hearing. The Return advances three arguments—a jurisdictional bar
24 under § 1252(g), mandatory detention under § 1225(b)(1), and the absence of any constitutional
25 limit on that detention.

26 The government’s strongest argument is statutory: that § 1225(b)(1)(B)(ii) mandates
27 Petitioner’s detention during removal proceedings, and that *Jennings v. Rodriguez*, 583 U.S.

1 281 (2018), forecloses any statutory bond-hearing requirement. Petitioner assumes for present
2 purposes that § 1225(b)(1)(B)(ii) supplies the statutory detention authority. But that does not
3 resolve this case. Jennings addressed statutory interpretation, not the constitutional limits on
4 prolonged civil detention, and it expressly remanded for consideration of the respondents’
5 constitutional arguments. *Id.* at 312. The question here is thus not whether the INA expressly
6 grants a bond hearing, but whether due process permits the government to continue holding
7 Petitioner for a prolonged period without any individualized custody determination.

8 Multiple district courts have since applied the *Mathews v. Eldridge* framework directly
9 in the § 1225(b) context and concluded that the Due Process Clause requires a bond hearing
10 when detention becomes prolonged. *See Baghdasaryan v. Warden of California City Detention*,
11 No. 1:25-CV-00107-KES-SKO (HC), 2025 WL 1808676 (E.D. Cal. 2026) (ordering the
12 government to justify continued § 1225(b) detention by clear and convincing evidence at a
13 bond hearing before an immigration judge), findings and recommendations adopted. The
14 Return’s contrary argument rests on *Thuraissigiam* and *Mezei*—neither of which addressed
15 prolonged detention of a noncitizen deep within contested removal proceedings.

16 ARGUMENT

17 I. Section 1252(g) Does Not Bar Jurisdiction.

18 Respondents argue that § 1252(g) bars judicial review because Petitioner’s detention
19 “necessarily arise[s] from” the decision to commence removal proceedings. Return at 3. This
20 misreads the statute. The Supreme Court construed § 1252(g) narrowly, explaining that it “applies
21 only to three discrete actions that the Attorney General may take: her ‘decision or action’ to
22 ‘commence proceedings, adjudicate cases, or execute removal orders.’” *AADC*, 525 U.S. at 482.
23 The Court specifically warned against reading the provision as a “general jurisdictional limitation.”
24 *Id.*

25 Petitioner does not challenge the decision to commence proceedings. He challenges the
26 constitutionality of prolonged detention without any individualized hearing—a claim
27 “independent of or collateral to the removal process.” *Gonzalez v. U.S. Immigr. & Customs Enf’t*,

1 975 F.3d 788, 810 (9th Cir. 2020). The Ninth Circuit has confirmed that “§ 1252(g) does not
2 prohibit challenges to unlawful practices merely because they are in some fashion connected to
3 removal orders.” *Ibarra-Perez v. United States*, 154 F.4th 989 (9th Cir. 2025). *See also Walters v.*
4 *Reno*, 145 F.3d 1032, 1052–53 (9th Cir. 1998) (§ 1252(g) does not bar due process claims); *Parra*
5 *v. Perryman*, 172 F.3d 954, 957 (7th Cir. 1999) (same for habeas detention challenges).

6 **II. The Due Process Clause Requires a Bond Hearing After Prolonged Detention Under §**
7 **1225(b)(1).**

8 The central question in this case is constitutional: does the Fifth Amendment permit the
9 government to imprison a person for nine months—and counting—without any individualized
10 determination that his detention serves a legitimate civil purpose? It does not.

11 **1. Jennings preserved the constitutional question.**

12 Respondents treat *Jennings* as foreclosing relief. It does not. *Jennings* held that the
13 constitutional avoidance canon could not supply a statutory bond hearing requirement under §
14 1225(b). 583 U.S. at 297. But the Court *expressly remanded* for consideration of “the merits of
15 respondents’ constitutional arguments in the first instance.” *Id.* at 312. If the statute’s text already
16 answered every constitutional question, there would have been nothing to remand. The Ninth
17 Circuit has confirmed the question remains open: “[I]t remains undetermined whether the Due
18 Process Clause requires additional bond procedures under any immigration detention statute.”
19 *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1201 (9th Cir. 2022) (emphasis in original).

20 **2. Thuraissigiam and Mezei do not control.**

21 *Thuraissigiam* addressed whether a noncitizen still in *expedited removal*—a summary
22 process with no immigration judge—had a right to further review of a negative credible fear
23 determination. 591 U.S. at 138–40. Petitioner’s procedural posture is entirely different. He has
24 *passed* credible fear, been referred to full removal proceedings, received a merits hearing before
25 an immigration judge, and filed a timely BIA appeal. He is not challenging the government’s
26 admission decision; he is challenging the constitutionality of prolonged physical imprisonment
27 while his case is adjudicated.

1 *Mezei* involved a noncitizen detained on Ellis Island whom no country would accept—a
2 case about indefinite exclusion, not prolonged detention during active removal proceedings. The
3 Due Process Clause protects “all ‘persons’ within the United States, including aliens, whether their
4 presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678,
5 693 (2001). Petitioner has been physically present for nine months and is engaged in contested
6 proceedings. Whatever residual force *Mezei*’s entry fiction retains, it cannot strip all due process
7 protections from a person detained this long within United States territory.

8 **3. District courts have applied Mathews and ordered bond hearings in the § 1225(b)**
9 **context.**

10 In *Baghdasaryan v. Warden of California City Detention*, No. 1:25-cv-01555-KES-EPG
11 (E.D. Cal. Feb. 11, 2026), the petitioner had not been released at any point, had passed credible
12 fear, remained detained under § 1225(b) during ongoing removal proceedings, and the court held
13 that due process required a bond hearing at which the government must justify continued detention
14 by clear and convincing evidence.

15 Other courts have reached the same result. *See Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 773
16 (S.D. Cal. 2020) (bond hearing ordered for § 1225(b) detainee held 27 months). Even
17 Respondents’ own cases acknowledge constitutional limits exist: *Sibomana* recognized courts
18 become “extremely wary” past one year, 2023 WL 3028093, at *4, and *Sadeqi* held that almost 12
19 months did not, “by itself, without more,” establish a due process violation, but still granted relief
20 based on the surrounding circumstances and ordered a bond hearing. Those factors are present
21 here: no prior hearing whatsoever, no criminal history, full cooperation, and a government-credited
22 CAT claim.

23 **III. The Lopez Factors Favor Petitioner.**

24 **Length of detention.** Petitioner has been detained approximately nine months. Unlike
25 petitioners in Respondents’ cases (*Durand* at 32 months, *Sibomana* at 19 months, *Sanchez-Rivera*
26 at three years), Petitioner has never received *any* bond hearing. Those cases addressed whether
27

1 detention was unreasonable *after* an initial custody determination. The complete absence of
2 process is constitutionally distinct.

3 **Likely duration of future detention.** Respondents dismiss this in a single sentence. But
4 Petitioner’s BIA appeal was filed February 17, 2026. BIA adjudication typically takes twelve to
5 twenty months. A Petition for Review could add years. Under any scenario, many additional
6 months of detention lie ahead. *See D.D. v. LaRose*, Case No. 25-cv-02581-BJC-JLB, ECF No. 10
7 at 7 (S.D. Cal. Oct. 22, 2025).

8 **Responsibility for delays.** No evidence Petitioner caused any delay. He cooperated with
9 every proceeding and filed a timely appeal—his legal right. *Sanchez-Rivera*, 2023 WL 139801, at
10 *6.

11 **IV. Respondent Are Silent on the CAT Finding.**

12 The Petition documented the government’s formal determination—by USCIS Asylum
13 Officer John Lanigan, approved by Supervisory Officer Gretta Owens—that Petitioner faces a
14 greater-than-fifty-percent probability of torture if returned to Russia. The Return does not address
15 this finding.

16 The two permissible purposes for civil detention are preventing flight risk and danger.
17 *Zadvydas*, 533 U.S. at 690–92. A man facing near-certain torture if deported has the most powerful
18 incentive to remain and pursue his claims. *See Padilla*, 704 F. Supp. 3d at 1173. As to danger, the
19 government’s own I-213 states: “CRIMINAL HISTORY: Subject does not have any criminal
20 history.” Both pillars of lawful civil detention are absent.

21 **V. Petitioner Satisfies the TRO Standard.**

22 The foregoing demonstrates likelihood of success on the merits. Petitioner suffers
23 ongoing irreparable harm through deprivation of physical liberty. *Zadvydas*, 533 U.S. at 690.
24 The balance of equities favors Petitioner because “the government has no legitimate interest in
25 detaining individuals who have been determined not to be a danger to the community and
26 whose appearance at future immigration proceedings can be reasonably ensured.” *Hernandez v.*
27 *Sessions*, 872 F.3d 976, 994 (9th Cir. 2017). The public interest is served by constitutional

1 compliance.

2 **CONCLUSION**

3 Petitioner has been imprisoned for nine months without any bond hearing. He has no
4 criminal history. The government's own officers found he faces near-certain torture if deported.
5 Even accepting that § 1225(b)(1)(B)(ii) mandates detention as a statutory matter, the
6 Constitution imposes an independent floor: prolonged civil detention without individualized
7 justification violates the Due Process Clause. The *Mathews* analysis—applied by multiple
8 district courts in the § 1225(b) context—compels the same result here.

9 For the reasons stated herein, Petitioner respectfully requests that the Court deny the
10 Return and grant the Petition by ordering Petitioner's immediate release or, in the alternative, a
11 prompt bond hearing at which the government bears the burden of justifying continued
12 detention by clear and convincing evidence.

13 Dated: March 15, 2026

Respectfully submitted,

14 /s/ Magomed Esendirov

15 Magomed Esendirov, Esq.

16 Attorney for Petitioner