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

12 Zurab Khuria and Roila
13 Zumratshoeva,

14 Petitioners,

15 vs.

16 Christopher LaRose, Gregory
17 Archambeault, Todd Lyons, Kristi
18 Noem, and Pamela J. Bondi,

19 Respondents.

Case No. 26-cv-1743-JLS-BJW

**PETITIONERS' RESPONSE
TO GOVERNMENT'S
RETURN**

20
21 **I. INTRODUCTION**

22 Petitioners Zurab Khuria ("Mr. Khuria") and Roila Zumratshoeva
23 ("Mrs. Zumrastshoeva") submit this reply to address the government's
24 arguments regarding the jurisdictional bar under 8 U.S.C. § 1252(g), the
25

1 scope of mandatory detention under 8 U.S.C. § 1225(b)(1)(B)(ii), and the
2 constitutional limits on the duration of such detention in the Ninth Circuit.
3
4 Petitioners challenge prolonged detention without an individualized bond
5 hearing and seek release or, at a minimum, a constitutionally adequate
6 hearing.

7 **II. ARGUMENT**

8 **A. This Court Has Jurisdiction Over Petitioners' Habeas** 9 **Claims, and 8 U.S.C. § 1252(g) Does Not Bar Review.**

10 Respondents assert that § 1252(g) strips this Court of jurisdiction
11 because Petitioners' challenge "arises from" DHS's decision to commence
12 removal proceedings. This argument conflates two distinct government
13 actions: the decision to commence removal proceedings and the decision to
14 detain without process.
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16 The Supreme Court has repeatedly held that the Constitution's
17 Suspension Clause, U.S. Const. art. I, § 9, cl. 2, preserves the writ of habeas
18 corpus as a vehicle for challenging the legality of executive detention. *See*
19 *INS v. St. Cyr*, 533 U.S. 289, 301 (2001). In *Boumediene v. Bush*, 553 U.S.
20 723, 745 (2008), the Court emphasized that "[t]he Clause protects the rights
21 of the detained by a means consistent with the essential design of the
22 Constitution." Jurisdiction-stripping provisions must be read narrowly to
23
24 avoid serious constitutional problems under the Suspension Clause.
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1 Moreover, the Supreme Court in *Reno v. American-Arab Anti-*
2 *Discrimination Committee* (“AADC”), 525 U.S. 471, 482 (1999), construed §
3 1252(g) narrowly, as applying only to three discrete actions: the decision to
4 “commence proceedings, adjudicate cases, or execute removal orders.” A
5 habeas challenge to the constitutionality of prolonged detention without a
6 bond hearing does not challenge any of these three discrete actions; it
7 challenges the conditions of executive custody itself. *See AADC*, 525 U.S. at
8 482; *see also Zadvydas v. Davis*, 533 U.S. 678, 688 (2001) (exercising habeas
9 jurisdiction to review constitutionality of immigration detention).
10
11

12 The Ninth Circuit retains jurisdiction to consider constitutional
13 claims arising from discretionary relief or detention in immigration
14 proceedings, and such claims are reviewed de novo. *Tovar-Landin v.*
15 *Ashcroft*, 361 F.3d 1164 (9th Cir. 2004); *AADC*, 525 U.S. at 482.
16

17 Petitioners’ habeas challenge is not directed at the Attorney General’s
18 decision to commence proceedings, adjudicate the case, or execute a
19 removal order, but rather at the legality and constitutionality of their
20 ongoing detention under § 1225(b)(1)(B)(ii). The Supreme Court and Ninth
21 Circuit have made clear that § 1252(g) does not bar judicial review of
22 constitutional claims challenging the legality of detention, even when such
23 detention is incident to removal proceedings. *Ashcroft*, 361 F.3d at 1164;
24
25

1 *AADC*, 525 U.S. at 482.

2 The government’s reliance on district court cases interpreting §
3 1252(g) more broadly is misplaced, as controlling Supreme Court and Ninth
4 Circuit precedent limit the jurisdictional bar to the three enumerated
5 actions, preserving habeas review for constitutional claims. *AADC*, 525
6 U.S. at 471.

8 **B. Petitioners’ Prolonged Detention Without a Bond**
9 **Hearing Violates the Due Process Clause of the Fifth**
10 **Amendment.**

11 Respondents argue that arriving aliens like Petitioners possess no
12 due process rights “other than those afforded by statute,” relying
13 principally on *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206
14 (1953), and *DHS v. Thuraissigiam*, 591 U.S. 103 (2020). This argument
15 fundamentally misconstrues the scope of those holdings. *Thuraissigiam*
16 addressed a noncitizen’s claim to additional procedural protections in the
17 expedited removal process—specifically, the right to have a federal court
18 review the merits of an asylum claim. 591 U.S. at 138–40. The Court did
19 not hold that arriving aliens lack all constitutional protection against
20 indefinite physical detention. To the contrary, the Court in *Zadvydas*
21 recognized that “[f]reedom from imprisonment—from government custody,
22 detention, or other forms of physical restraint—lies at the heart of the
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1 liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.
2 The *Zadvydas* Court held that the Due Process Clause places an outer limit
3 on the government’s power to detain noncitizens, even those subject to final
4 orders of removal. *Id.* at 689–90.

6 **C. Scope of Mandatory Detention Under 8 U.S.C. §**
7 **1225(b)(1)(B)(ii)**

8 The Supreme Court in *Jennings v. Rodriguez*, 583 U.S. 281, 138 S. Ct.
9 830 (2018), held that 8 U.S.C. § 1225(b)(1)(B)(ii) mandates detention of
10 arriving aliens with positive credible fear determinations pending the
11 conclusion of removal proceedings, and that the statute does not provide for
12 bond hearings or impose a time limit on detention. *Jennings*, 583 U.S. at
13 281. However, *Jennings* did not resolve whether prolonged mandatory
14 detention without a bond hearing could raise constitutional concerns.
15 *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 770 (S.D. Cal. 2020). The Court
16 expressly left open the possibility of as-applied constitutional challenges to
17 the duration or conditions of detention under § 1225(b). *Jennings*, 583 U.S.
18 at 281.

21 The Ninth Circuit and district courts within the Circuit have
22 recognized that, while the statute mandates detention, constitutional due
23 process may require a bond hearing or release if detention becomes
24 unreasonably prolonged, particularly where removal proceedings are
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1 delayed or indefinite. *Martinez v. Clark*, 124 F.4th 775 (9th Cir. 2024).

2 **D. Constitutional Limits on the Duration of Mandatory**
3 **Detention**

4 The Supreme Court has repeatedly affirmed that Congress has broad
5 authority over immigration and may mandate detention for immigration
6 purposes, but due process requires that such detention not be arbitrary or
7 indefinite. *Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022). Courts in the
8 Ninth Circuit have applied a reasonableness standard, considering the
9 total length of detention, the anticipated duration until resolution, and the
10 source of any delay. *See, e.g., Martinez*, 124 F.4th at 775.
11

12
13 Petitioners have been detained for approximately seven months, with
14 individual merits hearings scheduled within the next two months. While
15 detentions under one year are not per se unconstitutional, length is the
16 most important factor, and due process concerns intensify as detention
17 continues or delays mount.
18

19 While *Jennings* forecloses a statutory right to bond hearings under §
20 1225(b), it does not preclude as-applied constitutional challenges to
21 prolonged detention. *Singh v. Barr*, 400 F. Supp. 3d 1005 (S.D. Cal. 2019).
22 Petitioners' claim is precisely the type of constitutional challenge left open
23 by *Jennings*.
24

25 *Thuraissigiam* addressed the scope of due process rights for arriving

1 aliens seeking initial entry, holding that such individuals are entitled only
2 to the process Congress provides by statute. However, *Thuraissigiam* did
3 not address the constitutionality of prolonged detention pending removal
4 proceedings for aliens who have already been found to have a credible fear
5 and are pursuing relief before an immigration judge. *Thuraissigiam*, 591
6 U.S. at 103.

8 Petitioners' claim is distinguishable from the cases the government
9 relies on, because they challenge the reasonableness of ongoing detention,
10 not the initial process for admission or removal.

12 **E. Remedy: Individualized Bond Hearing with**
13 **Government Burden**

14 The Due Process Clause requires that when a noncitizen's detention
15 becomes unreasonably prolonged, the government must justify that
16 detention at an individualized bond hearing. *See, e.g., Zadvydas*, 533 U.S.
17 at 692 (holding that the government bears the burden of establishing that
18 detention is justified).

20 The Supreme Court and Ninth Circuit have consistently recognized
21 the availability of habeas relief to challenge the legality and
22 constitutionality of immigration detention, even where the statute
23 mandates detention. *Ashcroft*, 361 F.3d at 1164; *AADC*, 525 U.S. at 471.

24 Petitioners are asylum seekers—individuals who arrived at a port of
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1 entry, submitted to the lawful process, and were found to have a credible
2 fear of persecution. They have not been convicted of any crime, and the
3 record contains no evidence that they pose a danger to the community or a
4 risk of flight.
5

6 Petitioners' detention, while not yet at the outer limits recognized by
7 the courts, is at a duration where due process concerns become more acute,
8 particularly if further delays occur or if removal proceedings are not
9 promptly resolved.
10

11 III. CONCLUSION

12 Respondents' return rests on an overbroad reading of *Jennings*, a
13 misapplication of the entry fiction doctrine, and a jurisdictional argument
14 that conflicts with the Supreme Court's binding interpretation of § 1252(g).
15

16 Petitioners Khuria and Zumratshoeva have been detained for over
17 seven months without any individualized assessment of whether their
18 continued imprisonment is necessary. The Court retains jurisdiction to
19 consider petitioners' constitutional challenge to their ongoing detention
20 under § 1225(b)(1)(B)(ii), notwithstanding § 1252(g). While the statute
21 mandates detention, due process may require a bond hearing or release if
22 detention becomes unreasonably prolonged or if individualized
23 circumstances warrant.
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1 For the foregoing reasons, Petitioners respectfully request that the
2 Court grant the habeas petition and order their release or, at a minimum,
3 an individualized bond hearing to determine whether continued detention
4 is justified.
5

6 Respectfully submitted this 2nd day of April, 2026.

7
8 DATED: April 2, 2026

/s/ Katherine L. Parker

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