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6
7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**

9 CHANGUAN CHEN,
10 Petitioner,
11 v.
12 KRISTI NOEM, et al.,
13 Respondents.

Civil Case No.: 26-cv-2158-BJC-VET

**Traverse in
Support of
Petition for Writ of
Habeas Corpus**

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1 INTRODUCTION

2 In his habeas petition, Mr. Chen explained that he is a citizen of China who
3 has been detained without a bond hearing for over a year. However, the
4 government maintains that this Court lacks jurisdiction over Mr. Chen’s detention
5 and that Mr. Chen remains subject to mandatory detention regardless of whether
6 that detention has become prolonged. Dkt. 11 at 1–2.¹

7 This Court should reject the government’s disturbing argument that he has
8 no due process interest in his own liberty, as “[m]ost courts” have. *Gao v. LaRose*,
9 805 F. Supp. 3d 1106, 1110 (S.D. Cal. 2025).

10 ARGUMENT

11 **I. Mr. Chen has a due process right to an individualized custody
12 determination because his detention has become prolonged.**

13 In his amended petition, Mr. Chen argued that he had a due process right to
14 an individualized custody determination because his detention has become
15 prolonged. In response, the government claims that Mr. Chen has no due process
16 right to release from custody at any time. Dkt. 8 at 5–10. It relies on cases that do
17 not support that assertion but instead articulate the entry fiction doctrine regarding
18 Congress’s “plenary authority to decide which [noncitizens] to admit” into the
19 country, *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 139
20 (2020), and *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953).

21
22 ¹ This Court clearly has jurisdiction over Mr. Chen’s habeas petition. *Noori v.*
23 *LaRose*, 807 F. Supp. 3d 1146, 1161 (S.D. Cal. 2025) (“Respondents argue that
24 Petitioner’s detention “arises from DHS’s decision to commence such proceedings
25 against him,” which would divest this Court of jurisdiction. [.] However, §
26 1252(b)(9) cannot be stretched to preclude jurisdiction for this petition because
27 “[i]nterpreting ‘arising from’ in this extreme way would also make claims of
28 prolonged detention effectively unreviewable.” *Jennings v. Rodriguez*, 583 U.S.
281, 293, 138 S.Ct. 830, 200 L.Ed.2d 122 (2018) (finding cramming judicial review
of detention questions into the review of final removal orders would be absurd).
Adopting Respondent’s application of § 1252(b)(9) would permit an excessive
detention to take place by the time a final order of removal was eventually entered.
Id. As such, § 1252(b)(9) does not present a jurisdictional bar to the instant
petition.”)

1 Neither the doctrine nor the cases address the due process constraints on
2 *detention*. “*Mezei* involved a noncitizen who was permanently excluded from the
3 United States on security grounds, not a detainee raising their due process rights
4 in the context of detention without a bond hearing.” *Amado v. U.S. Dept. of*
5 *Justice*, 2025 WL 3079052, *5 (S.D. Cal. Nov. 4, 2025) (collecting cases). And
6 “*Thuraissigiam* addressed a noncitizen’s right to challenge admission, not
7 detention.” *Id.* (collecting cases). “At least five circuit courts have all since
8 considered due process challenges to unreasonably prolonged mandatory
9 detention under [another immigration statute] § 1226, and, tellingly, none of them
10 referenced *Thuraissigiam* in their majority opinions.” *Lopez-Arevelo v. Ripa*, 801
11 F. Supp. 3d 668, 683 (W.D. Tex. 2025). As it stands, “the entry fiction doctrine
12 does not trump the constitutional issues raised here.” *Kydyrali v. Wolf*, 499 F.
13 Supp. 3d 768, 771 (S.D. Cal. 2020).

14 Further, “[t]he *Mezei* Court explicitly grounded its decision in the special
15 circumstances of a national emergency and the determination by the Attorney
16 General that *Mezei* presented a threat to national security.” *Rosales-Garcia v.*
17 *Holland*, 322 F.3d 386, 413–14 (6th Cir. 2003). Here, the problem is that the
18 government has *never* identified a specific reason why Mr. Gebremedn is a flight
19 risk or a danger. The problem is that he has received no individual evaluation at
20 all.

21 For instance, the government relies on a recent decision from this district
22 denying a prolonged detention challenge. Dkt. 11 at 10 (citing *Markov v. Larose*,
23 25-CV-3811 JLS (SBC), 2026 WL 92069 (S.D. Cal. January 13, 2026)). But in a
24 decision issued two weeks after *Markov*, the same judge granted a prolonged
25 detention case where the individual was on appeal at the BIA. See *Fernandes v.*
26 *Warden*, 25-CV-3813 JLS (MSB) (S.D. Cal. January 26, 2026). In that decision,
27 the judge explained:

28 As to the likely duration of future detention, Petitioner argues that he “has

1 reason to anticipate significant future detention during his appellate
2 process” since a “BIA appeal itself can take months, and afterward, a
3 petitioner may appeal to the Ninth Circuit.” Pet. at 7 (citing *Banda v.*
4 *McAleenan*, 385 F. Supp. 3d 1099, 1119 (W.D. Wash. 2019)). The Court
5 agrees, since Respondents “cannot predict with any degree of confidence
6 when the BIA appeal will be resolved.” *Masood v. Barr*, No. 19-CV-
7 07623-JD, 2020 WL 95633, at *3 (N.D. Cal. Jan. 8, 2020). . . Respondents
8 fail to address Petitioner’s pending appeal. See Ret. Therefore, the likely
9 duration of future detention weighs in Petitioner’s favor.

10 *Id.* at *4–5. Mr. Chen’s case is currently at the merits-stage. Contrary to the
11 Government’s assertion, Dkt. 11 at 2, Mr. Chen’s merits hearing is not scheduled
12 until May 16, 2016. See Exhibit A. Whether the hearing will go forward on that
13 date is currently unknown. And should Mr. Chen lose his merits hearing, he will
14 appeal to the BIA and the Ninth Circuit. Thus, Mr. Chen’s detention is—and will
15 continue to be—prolonged.

16 Moreover, the *Banda* factors weigh in Mr. Chen’s favor. Multiple courts
17 have held that detention has become “prolonged” at nine months. See *Brissett v.*
18 *Decker*, 324 F. Supp. 3d 444, 452 (S.D.N.Y. 2018) (“over nine months”); *Perez v.*
19 *Decker*, No. 18-CV-5279 (VEC), 2018 WL 3991497, at *5 (S.D.N.Y. Aug. 20,
20 2018) (“more than nine months”); *Masood v. Barr*, No. 19-CV-07623-JD, 2020
21 WL 95633, at *2 (N.D. Cal. Jan. 8, 2020) (“nearly nine months”). Mr. Chen has
22 been in custody for a over a year. This factor therefore favors Mr. Chen.

23 Second, as just noted, Mr. Chen intends to appeal any adverse decision at
24 his merits hearing. All told, “[t]his process may take up to two years or longer.”
25 *Banda*, 385 F. Supp. 3d at 1119. Because “Petitioner’s future detention can last
26 several more months or even years[,]” this factor favors Mr. Chen. *Abdul Kadir v.*
27 *Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654, at *5 (S.D. Cal. Oct. 15,
28 2025).

Third, conditions of confinement weigh in favor of him. “Petitioner’s
confinement at [Otay Mesa Detention Center] is ‘indistinguishable from penal
confinement.’” *Abdul Kadir*, 2025 WL 2932654, at *5 (quoting *Kydyrali*, 499 F.

1 Supp. 3d at 773).

2 Fourth and fifth, Mr. Chen has not caused any unreasonable delays in his
3 removal proceedings; thus, this factor is arguably neutral.

4 Sixth, regarding the likelihood that the removal proceedings will result in a
5 final order of removal, Mr. Chen has a prima facie claim for political asylum.
6 Accordingly, under the *Banda* factors, Mr. Chen is entitled to release or a bond
7 hearing.

8 **Conclusion**

9 For these reasons, this Court should grant the petition and order Mr. Chen's
10 immediate release. But at a minimum, it should order that he receive a bond
11 hearing at which the government bears the burden of showing by clear and
12 convincing evidence that he is a danger or a flight risk.

13 Respectfully submitted,

14
15 Dated: May 12, 2026

s/ Robert Rexrode
16 Robert Rexrode
17 Attorney for Petitioner