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

11 NTANGKU DESMOND AKUOH,
12
13 Petitioner,

14 v.

15 CHRISTOPHER J. LAROSE,
16 Warden at Otay Mesa Detention
17 Center;

18 MARKWAYNE MULLIN,
19 Secretary of U.S. Department of
20 Homeland Security;

21 TODD LYONS, Acting Director of
22 U.S. Immigration and Customs
23 Enforcement;

24 DANIEL A. BRIGHTMAN,
25 Director, San Diego Field Office,
26 Immigration and Customs
27 Enforcement, Enforcement and
28 Removal Operations;

TODD BLANCHE, Acting Attorney
General of the U.S.

Respondents.

CIVIL CASE: 26-CV-2257-AGS

**Traverse in Support of
Petition for Writ of Habeas
Corpus Under 28 U.S.C. § 2241**

INTRODUCTION

In his Amended Petition, Ntangku Desmond Akuoh explained that he had traveled to the United States border to request asylum because his life was in imminent danger in his home country of Cameroon. Mr. Akuoh noted that at the time of the Amended Petition, he had been in immigration custody for over 6.5 months and that by the time his claims were decided he would likely be in custody for over eight months. He analyzed the factors taken from *Banda v. McAleenan*, 385 F. Supp 1099 (W.D. Wash. 2019) and argued that all of the factors weighed in favor of granting relief in the form of release or a bond hearing.

Respondent's Return first argues that Mr. Akuoh's entire claim is jurisdictionally barred under 8 U.S.C. § 1252(g). Respondent then argues that (1) there is no constitutional due process remedy when an immigrant is detained under 8 U.S.C. § 1225(b)(1), and (2) the factors to determine whether due process requires a bond hearing weigh against Mr. Akuoh.

As explained below, Respondent's arguments are unsupported and the Court should grant the relief requested in Mr. Akuoh's Amended Petition.

ARGUMENT

A. The Court Does Not Lack Jurisdiction Under § 1252(g).

Respondent argues that Mr. Akuoh's requests for relief "necessarily arise from the Department of Homeland Security's decision to commence removal proceedings against him" and that his claims are therefore barred by 8 U.S.C. § 1252(g), which states that "no court shall have jurisdiction to hear any cause or claim by or on behalf

1 of any alien arising from the decision or action by the Attorney General
2 to commence proceedings, adjudicate cases, or execute removal orders
3 against any alien under this chapter.” [Ret. at 4.]¹

4 First, Mr. Akuoh is aware of no court from this district holding
5 that a person in immigration custody is barred under § 1252(g) from
6 requesting relief in the form of release or a bond hearing in district
7 court. And Respondent cites no such case or any precedential authority
8 for its position.

9 Second, § 1252(g) does not deprive this Court of jurisdiction
10 because Mr. Akuoh is not challenging the government’s discretionary
11 decision to “commence proceedings, adjudicate cases, or execute
12 removal orders.” Rather, Mr. Akuoh challenges the constitutionality of
13 his continued detention without adequate due process. The Supreme
14 Court has explained that § 1252(g) is a “narrow” provision that applies
15 only to the three discrete actions specifically enumerated in the
16 statute. *Reno v. American-Arab Anti-Discrimination Committee*, 525
17 U.S. 471, 482 (1999). The Ninth Circuit has similarly held that
18 “[t]hough the statute bars any claim ‘arising from’ those actions, a
19 plurality of the Supreme Court has interpreted ‘arising from’ as
20 referring to ‘just those three specific actions themselves,’ not any action
21 that bears a technical but-for relationship to them.” *Ibarra-Perez v.*
22 *United States*, 154 F. 4th 989, 1002-03 (9th Cir. 2025).

23 Respondent attempts to expand § 1252(g) by arguing that
24 detention “arises from” the decision to commence removal proceedings.
25 But nearly every immigration detention case could be characterized
26 that way. If accepted, Respondent’s position would effectively eliminate
27

28 ¹ Citations to the Respondent’s Return are to “Ret.” and citations to the Amended Petition are to “AP”.

1 habeas review over prolonged detention claims entirely, contrary to
2 longstanding habeas principles and the Supreme Court's recognition
3 that federal courts retain jurisdiction to review challenges to
4 immigration detention. *See Jennings v. Rodriguez*, 583 U.S. 281, 313
5 (2018) (addressing § 1252(g)); *Demore v. Kim*, 538 U.S. 510 (2003);
6 *Zadvydas v. Davis*, 533 U.S. 678 (2001).²

7 Mr. Akuoh does not ask this Court to halt removal proceedings,
8 reverse the issuance of the Notice to Appear, or interfere with the
9 government's prosecutorial discretion. He seeks review of whether his
10 ongoing detention comports with the Constitution. Such claims are
11 distinct from the decision to commence proceedings and therefore fall
12 outside § 1252(g).

13 The Court should disregard Respondent's argument on this
14 jurisdictional question.

15 **B. Section 1225(b)(1) Does Not Foreclose a Due Process**
16 **Challenge to Prolonged Detention.**

17 Respondent argues that § 1225(b)(1) categorically forecloses any
18 constitutional limitation on the period or type of detention merely
19 because the statute includes mandatory language and does not
20 expressly provide for bond hearings. [Ret. at 5-8.] It also suggests that
21 the holding in *Jennings* forecloses a constitutional challenge to
22 indefinite detention for asylum seekers. [*Id.* at 6.] But the lack of a
23 *statutory* bond mechanism does not answer the *constitutional* question.

24
25 ² In fact, one of the district court opinions Respondent cites for its
26 proposition that § 1225(b)(1) forecloses any constitutional relief,
27 *Zelaya-Gonzalez v. Matuszewski*, No. 23-CV-151 JLS-KSC, 2023 WL
28 3103811 (S.D. Cal. April 25, 2023), explicitly found that "claims
challenging ancillary or collateral issues arising independently from
the removal process—for example, a claim of indefinite detention—
federal habeas corpus jurisdiction remains in the district court." *Id.* at
*4 (citing *Nadarajah v. Gonzales*, 443 F.3d 1069, 1076 (9th Cir. 2006)).

1 In *Jennings*, the Supreme Court addressed only statutory
2 interpretation and expressly declined to decide whether prolonged
3 detention under § 1225(b) could violate due process. 583 U.S. at 313.
4 *Jennings* therefore does not hold that detention under § 1225(b)(1) may
5 continue indefinitely without constitutional scrutiny.

6 And the government's citation to a few district court cases to
7 support the proposition that there is no due process constitutional
8 protection against prolonged detention, is cherry-picking. In his
9 Amended Petition, Mr. Akuoh cited numerous district court cases
10 holding that immigrants held under § 1225(b) (whatever the
11 subsection) may assert a constitutional claim to due process via a
12 habeas petition. [AP at 9 (*see, e.g., Abdul Kadir v. Larose*, No.
13 25CV1045-LL-MMP, 2025 WL 2932654, at *6 (S.D. Cal. Oct. 15,
14 2025).] Mr. Akuoh also cited *Banda v. Mcaleenan*, which found that
15 “[n]early all district courts that have considered the issue agree that
16 “prolonged mandatory detention pending removal proceedings, without
17 a bond hearing, ‘will—at some point—violate the right to due
18 process.’ ” [AP at 9 (quoting 385 F. Supp. 3d at 1117).] The district
19 court cases cited by Respondent ignore the reality that it is the
20 overwhelming consensus of district courts that petitioners like Mr.
21 Akuoh can indeed seek constitutional relief under these circumstances.
22 In fact, the same judge who decided one of the cases cited by
23 respondent (*Zelaya-Gonzalez v. Matuszewski*, No. 23-CV-151 JLS-KSC,
24 2023 WL 3103811 (S.D. Cal. April 25, 2023)), more recently filed an
25 order granting the petitioner's request for a bond hearing and
26 explicitly found that “[d]etention under 8 U.S.C. § 1225 must comport
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1 with due process.”³

2 Lastly, Respondent’s position is also logically flawed because it
3 would permit detention to continue for years based solely on
4 administrative and appellate delay, without any inquiry into flight
5 risk, dangerousness, or necessity of confinement. Under the
6 government’s theory, an asylum seeker with a pending BIA appeal
7 could remain imprisoned indefinitely even where proceedings are
8 substantially delayed through no fault of the detainee. The Due
9 Process Clause exists precisely to prevent such unchecked executive
10 restraint on physical liberty. At a minimum, constitutional due process
11 must require some individualized custody determination once
12 detention becomes unreasonably prolonged, as is the case here.

13 **C. Respondent’s Analysis of the Applicable Factors is**
14 **Flawed.**

15 Respondent first argues the Court should apply the factors under
16 *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022), instead of
17 the “*Banda* factors” cited in Mr. Akuoh’s Amended Petition. [Ret. at 9.]
18 But whatever set of factors are used, they weigh in favor of finding
19 unconstitutionally prolonged detention and in granting a bond hearing.

20 Respondent begins the factors analysis by downplaying the
21 amount of time Mr. Akuoh has already spent in custody, which is
22 nearing seven months. Respondent cites five cases from this district in
23 support of its argument that someone must be in custody several years

24
25 ³ Moreover, directly after citing those cases and suggesting there is
26 a consensus against finding a due process right to a bond hearing, the
27 government cites numerous cases from this district and others that
28 found exactly the opposite, with one court noting, “In general, as
detention continues past a year, courts become extremely wary of
permitting continued custody absent a bond hearing.” *Sibomana v.*
LaRose, No. 22-cv-933-LL-NLS, 2023 WL 3028093, at *4 (S.D. Cal.
April 20, 2023)

1 to even be considered for a bond hearing. [Ret. at 9.] But the selection
2 of a few cases among an enormous number of cases from this district
3 does not establish a reliable yardstick. Mr. Akuoh can similarly cite to
4 other cases in which courts in this district have found much less time
5 to constitute prolonged detention. *See, e.g., Amado v. United States*
6 *Dep't of Just.*, No. 25CV2687-LL-DDL, 2025 WL 3079052 (S.D. Cal.
7 Nov. 4, 2025). Although the petitioner in *Amado* had been in custody
8 for thirteen months, the order granting relief noted that “[c]ourts have
9 found detention over seven months without a bond hearing weighs
10 toward a finding that it is unreasonable.” *Id.* at *5 (identifying other
11 cases where petitioner had been in custody between seven and nine
12 months).

13 The government is correct that the length of custody is not
14 considered in a vacuum and that while it is the most important factor,
15 the other *Banda* or *Lopez* factors must be considered. The second most
16 important factor in Mr. Akuoh’s case is that he stands to face a
17 significant additional time in custody if not afforded a bond hearing.
18 He noted in his Amended Petition that his appeal to the BIA was very
19 recently filed and there is no telling when those proceedings may be
20 resolved. [AP at 13.] If he is denied relief by the BIA, he fully plans to
21 appeal to the Ninth Circuit, which would necessarily take many more
22 months. Respondent does not address that likelihood at all and simply
23 states that “the likely duration of future detention weighs against
24 Petitioner”, while providing no reason why that is the case.

25 In reality, the nature of the government’s attempt to deport Mr.
26 Akuoh to a third country – Uganda – stands to complicate and delay
27 his appeals process because those types of efforts are encountering
28 several roadblocks. On March 12, 2026, ICE attorneys received an

1 email “directing them to halt motions that would send asylum-seekers
2 to so-called third countries to pursue their claims for protection,”
3 including Uganda.⁴ The policy of removing individuals to Uganda is
4 also the subject of a pending lawsuit. *See U.T., et al., v. Bondi, et al.*,
5 20-cv-116-EGS (D.D.C.). The practice of removing non-Ugandans to
6 Uganda is therefore subject to administrative and legal challenges that
7 make actual removal speculative at best. And while 1,100 people have
8 been ordered removed to Uganda in the last five months, less than 1%
9 of those removal orders have actually been carried out.⁵ These
10 developments stand to make Mr. Akuoh’s appeal(s) only more complex
11 and delayed, which weighs in favor of relief.

12 Respondent does not address the remaining factors in any length
13 and Mr. Akuoh reiterates that attempts to remove him to Uganda may
14 indeed prove a source of delay at the hands of the government.

15 All of the factors weigh in favor of finding prolonged detention.

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22 ⁴ See “U.S. pauses tactic to deport asylum-seekers to ‘third
23 countries,” *Seattle Times*, March 13, 2026, available at
24 [https://www.seattletimes.com/seattle-news/u-s-pauses-tactic-to-deport-](https://www.seattletimes.com/seattle-news/u-s-pauses-tactic-to-deport-asylum-seekers-to-third-countries/)

25 ⁵ See “Uganda receives first US deportation flight under third-country
26 agreement,” *The Guardian*, April 2, 2026, available at
27 [https://www.theguardian.com/us-news/2026/apr/02/uganda-receives-](https://www.theguardian.com/us-news/2026/apr/02/uganda-receives-first-us-deportation-flight-under-third-country-agreement#:~:text=1%20month%20old-Uganda%20receives%20first%20US%20deportation%20flight%20under%20third%2Dcountry%20agreement.%2C%20Vietnam%2C%20Laos%20and%20Myanmar)
28 [first-us-deportation-flight-under-third-country-](https://www.theguardian.com/us-news/2026/apr/02/uganda-receives-first-us-deportation-flight-under-third-country-agreement#:~:text=1%20month%20old-Uganda%20receives%20first%20US%20deportation%20flight%20under%20third%2Dcountry%20agreement.%2C%20Vietnam%2C%20Laos%20and%20Myanmar)
[agreement#:~:text=1%20month%20old-](https://www.theguardian.com/us-news/2026/apr/02/uganda-receives-first-us-deportation-flight-under-third-country-agreement#:~:text=1%20month%20old-Uganda%20receives%20first%20US%20deportation%20flight%20under%20third%2Dcountry%20agreement.%2C%20Vietnam%2C%20Laos%20and%20Myanmar)
[Uganda%20receives%20first%20US%20deportation%20flight%20unde](https://www.theguardian.com/us-news/2026/apr/02/uganda-receives-first-us-deportation-flight-under-third-country-agreement#:~:text=1%20month%20old-Uganda%20receives%20first%20US%20deportation%20flight%20under%20third%2Dcountry%20agreement.%2C%20Vietnam%2C%20Laos%20and%20Myanmar)
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[20and%20Myanmar](https://www.theguardian.com/us-news/2026/apr/02/uganda-receives-first-us-deportation-flight-under-third-country-agreement#:~:text=1%20month%20old-Uganda%20receives%20first%20US%20deportation%20flight%20under%20third%2Dcountry%20agreement.%2C%20Vietnam%2C%20Laos%20and%20Myanmar)

CONCLUSION

For the reasons set forth in his Amended Petition and in this Traverse, Petitioner Ntangku Desmond Akuoh respectfully requests the Court grant the relief outlined in the Amended Petition.

Respectfully submitted,

Dated: May 13, 2026

s/ Adam F. Doyle

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