Victor E. Hernandez, Esq. (Cal. State Bar No.: 349076)
Victor Hernandez Law
402 West Broadway, Suite 400
San Diego, CA 92101
(619) 514-4500
Victor@VEHLaw.com

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT, CALIFORNIA

LARICIA AKUM UFERK, Petitioner, v. Daniel BRIGHTMAN; Et. Al. Respondents.	Case No. 3:26-cv-02354-RBM-DDL **PETITIONER'S TRAVERSE IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

With the Respondent's Return in hand, this Court should grant the petition outright on all grounds. To do so, the Court need only follow recent decisions in this district and around the country. First, Respondents claims that Ms. Uferk requests are jurisdictionally barred by 8 U.S.C § 1252(g). However, Ms. Uferk is challenging the constitutionality of her detention, not the core proceedings involved in her removal. Next, the Respondents claim that Ms. Uferk is lawfully detained as an "applicant for admission" under 8 § U.S.C. 1225. Furthermore, Respondents argue that Ms. Uferk's detention has not been long enough to be considered prolonged, because it has thus far not been multiple years-long. Rather, this Court should find that Ms. Uferk's detention be considered prolonged, at now over seven months. This Court should therefore grant the petition on all grounds.

ARGUMENT

I. This Court Has Proper Jurisdiction

A district court has the jurisdiction to grant a writ of habeas corpus when a petitioner is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). "[T]he Fifth Amendment entitles aliens to due process of law in deportation proceedings." Demore v. Kim, 538 U.S. 510, 523 (2003).

The Court has authority to hear this case. Contrary to Respondent's arguments, § 1252(g) does not bar review of all claims arising from deportation proceedings. *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). In fact, the Supreme Court expressly limited the jurisdictional bar to claims arising solely from "the decision or action of the Attorney General to commence proceedings, adjudicate cases, or execute removal orders" only. *Id.* Instead, courts "have jurisdiction to decide a purely legal question that does not challenge the Attorney General's discretionary authority." *Ibarra-Perez v. United States*, __ F.4th __, 2025 WL 2461663, at *6 (9th Cir. Aug. 27, 2025) (cleaned up). Many courts agree. *See, e.g.*, *Kong*, 62 F.4th at 617 ("§ 1252(g) does not bar judicial review of Kong's challenge to the lawfulness of his detention," including ICE's "fail[ure] to abide by its own regulations"); *Cardoso v. Reno*, 216 F.3d 512, 516 (5th Cir. 2000) ("[S]ection 1252(g) does not bar courts from reviewing an alien detention order[.]"); *Parra v. Perryman*, 172 F.3d 954, 957 (7th Cir. 1999) (1252(g) did not apply to a "claim concern[ing] detention"); *J.R. v. Bostock*, No. 2:25-CV-01161-JNW, 2025 WL 1810210, at *3 (W.D. Wash.

June 30, 2025) (1252(g) did not apply to claims that ICE was "failing to carry out non-discretionary statutory duties and provide due process"); *D.V.D. v. U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355, 377–78 (D. Mass. 2025) (1252(g) did not bar review of "the purely legal question of whether the Constitution and relevant statutes require notice and an opportunity to be heard prior to removal of an alien to a third country").

In *Ibarra-Perez*, the Ninth Circuit squarely held that "§ 1252(g) does not prohibit challenges to unlawful practices merely because they are in some fashion connected to removal orders." *Id.* Instead, 1252(g) is "limited . . . to actions challenging the Attorney General's discretionary decisions to initiate proceedings, adjudicate cases, and execute removal orders." *Arce v. United States*, 899 F.3d 796, 800 (9th Cir. 2018). It does not apply to arguments that the government "entirely lacked the authority, and therefore the discretion," to carry out a particular action. *Id.* at 800. Thus, § 1252(g) applies to "discretionary decisions that [the Secretary] actually has the power to make, as compared to the violation of his mandatory duties." *Ibarra-Perez*, 2025 WL 2461663, at *9. The same logic applies to all of Ms. Uferk' claims because she challenges only violations of ICE's mandatory duties under statutes, regulations, and the Constitution, not the Attorney General's discretionary determinations related to her order of removal.

Petitioner does not dispute the government's authority to initially detain her upon the commencement of removal proceedings. Petitioner solely disputes the contention that her detention is "mandatory" and that she is thus not eligible for a bond hearing before an Immigration Judge. Accordingly, "[t]hough 8 U.S.C § 1252(g), precludes this Court from exercising jurisdiction over the executive's decision to 'commence proceedings, adjudicate cases, or execute removal orders against any alien,' this Court has habeas jurisdiction over the issues raised here, namely the lawfulness of Ms. Uferk' prolonged detention without a bond hearing. *Y.T.D.*, 2025 WL 2675760, at *5. Therefore, this Court does have jurisdiction over Ms. Uferk' petition.

II. Ms. Uferk's Detention Without a Bond Hearing Violates Her Fifth Amendment Rights

The Due Process clause prohibits deprivations of life, liberty, and property without due process of law. U.S. Const. amend. V. Petitioner does not dispute that Ms. Uferk is subject to mandatory detention under 8 U.S.C. § 1225(b)(1)(B). Ms. Uferk's arrival date to the United States was September 23, 2025, about seven (7) months ago. In their response, Respondents argue that

Ms. Uferk remains an "applicant for admission," and that she **must be detained for the duration** of her removal proceedings, and therefore that Petitioner is not entitled to a bond hearing. For the following reasons, Respondent' argument fails.

Respondents acknowledge in their response to the Petition that courts may infer a constitutional right against prolonged mandatory detention, where it is found to be unreasonably prolonged. *See* Dkt. 4, Page 9. The Supreme Court has held that the 8 U.S.C. § 1225(b) detention statute does not require a six-month limit on the detention of a noncitizen. *Jennings v. Rodriguez,* 138 S. Ct. 830, 844-48 (2018). *Jennings* does not, however, make a determination as to whether due process entitles one to a bond hearing when detention has become prolonged. *Id.* at 138 S. Ct. at 851. As the Supreme Court hold in *Zadvydas v. Davis*, "A statute permitting indefinite detention of an alien would raise a serious constitutional problem. The Fifth Amendment's Due Process Clause forbids the Government to deprive any person of liberty without due process of law." 533 U.S. 678, 690 (2001).

The legal fiction of remaining "legally," although not physically, outside of the United States as an "Arriving Alien" guides the § 1225(b) mandatory detention statute. The entry fiction provides that "[a]lthough aliens seeking admission into the United States may physically be allowed within its borders pending a determination of admissibility, such aliens are legally considered to be detained at the border and hence as never having effected entry into this country." *Barrera-Echavarria v. Rison*, 44 F.3d 1441, 1450 (9th Cir. 1995). However, "arbitrary civil detention is not a feature of our American government," and the Ninth Circuit has expressed "grave doubts that any statute that allows for arbitrary prolonged detention without any process is constitutional." *Rodriguez v. Marin*, 909 F.3d 252 (9th Cir. 2018). The entry fiction ignores the reality that Petitioner in currently present and detained within the United States and incorrectly suggests that an individual subject to detention under § 1225(b) are not subject to constitutional protections. Thus, such a legal fiction should not determine that Petitioner is not protected under the Fifth Amendment.

As such, Petitioner's detention without a bond hearing should be found to be a violation of her Fifth Amendment Rights to due process at the deprivation of her liberty.

III. Ms. Uferk's Detention is Unconstitutionally Prolonged.

As Respondents point out in their response to Petitioner's petition, a number of courts, including this district, have found that detention under § 1225(b) can be found to be

unconstitutionally prolonged. Respondents cite to multiple cases that support the suggestion that detention should be much longer than 6 months in order for Petitioner to warrant habeas relief, by referring to cases in which prolonged detention was found and bond hearings were ordered after at least nineteen months in detention. *See* Dkt. 4, Page 9. However, district courts in California, and outside of California, have found that bond hearings are warranted after much shorter periods as well. *See* Rodriguez v. Nielsen, No. 18-cv-4187-TSH, 2019 U.S. Dist. LEXIS 4228, at *17-19 (N.D. Cal. Jan. 7, 2019) (hearing necessary after six months); Gonzalez v. Bonnar, No. 18-cv-5321-JSC, 2019 WL 330906, at *3-4 (N.D. Cal. Jan. 26, 2019) (13 months); Meza v. Bonnar, No. 18-cv-2708-BLF, 2018 WL 2554572, at *3 (N.D. Cal. June 4, 2018) (13 months); Perez v. Decker, No. 18-CV-5279 (VEC), 2018 WL 3991497, at *6 (S.D.N.Y. 2018) (almost year-long detention is unreasonable and individual bond hearing required).

Petitioner contends that the following factors of *Banda v. McAleenan* should be considered in determining whether Petitioner's detention is prolonged:

> *(1) total length of detention to date;*
>
> *(2) likely duration of future detention;*
>
> *(3) conditions of detention;*
>
> *(4) delays in the removal proceedings caused by the detainee;*
>
> *(5) delays in the removal proceedings caused by the government; and*
>
> *(6) the likelihood that the removal proceedings will result in a final order of removal.*
>
> 385 F. Supp. 3d 1099, 1106 (W.D. Wash. 2019).

Petitioner has been detained for six months and remains detained indefinitely while she seeks review of her asylum denial before the Board of Immigration Appeals ("BIA"), and the Ninth Circuit, if necessary. Petitioner has caused no delay in her removal proceedings, while her case currently has been at an administrative standstill for two months, since she has filed her Notice of Appeal on February 20, 2026. The appeal has thus far not been scheduled by the BIA for briefing, and thus remains at a standstill. Petitioner further notes that the Asylum Cooperative Agreements under which Petitioner's asylum application was pretermitted is currently being challenged in

ongoing federal litigation, possibly complicating Petitioner's removal from the United States. U.T. v. BARR, 1:20-cv-00116, (D.D.C.). Ms. Uferk caused no delay in the adjudication of her asylum claim, has not caused any delay to the BIA's processing of her appeal.

Ms. Uferk has not been alleged to present any national security concerns, have any criminal record, and otherwise present any reason to require prolonged detention throughout the entirety of her proceedings, as she pursues her asylum claim before the immigration court. Thus, the court should find that Ms. Uferk's detention has been unconstitutionally prolonged.

CONCLUSION

For the foregoing reasons, the Court should find that continued detention of Ms. Uferk is unlawful and order Ms. Uferk's release from Respondents' custody, or order that Respondents provide Ms. Uferk with a bond hearing before the immigration court.

Respectfully submitted this 28th day of April 2026,

/s/ Victor E. Hernandez, Esq.

Victor E. Hernandez, Esq. (Cal. State Bar No.: 349076)
Victor Hernandez Law
402 West Broadway, Suite 400
San Diego, CA 92101
(619) 514-4500
Victor@VEHLaw.com
Attorney for Petitioner

CERTIFICATE OF ELECTRONIC SERVICE

I, VICTOR E. HERNANDEZ, CONFIRM THAT ON APRIL 28, 2026, I UPLOADED THE ATTACHED **PETITIONER'S TRAVERSE IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS** INTO THE PACER SYSTEM, AND THAT NO SEPARATE SERVICE IS REQUIRED AS ALL PARTIES ARE PARTICIPATING IN THE SYSTEM.

/s/ Victor E. Hernandez

Victor E. Hernandez, Esq.
(619) 514-4500
Victor@VEHLaw.com
Attorney for Petitioner