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6
7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA

9 Goitom Seged,

10 Petitioner,

11 v.

12 Christopher J. Larose, et al.,

13 Respondents.
14

Civil Case No.: 26-cv-02564-BTM-DEB

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

15 INTRODUCTION

16 In his habeas petition, Mr. Seged explained that he is a citizen of Ethiopia who
17 has been detained without a bond hearing for nearly nine months. However, the
18 government maintains that Mr. Seged remains subject to mandatory detention
19 regardless of whether that detention has become prolonged. Dkt. 6 at 3–10. This
20 Court should reject the government’s disturbing argument that he has no due
21 process interest in his own liberty, as “[m]ost courts” have. *Gao v. LaRose*, 805 F.
22 Supp. 3d 1106, 1110 (S.D. Cal. 2025).
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ARGUMENT

I. Mr. Seged has a due process right to an individualized custody determination because his detention has become prolonged.

A. Mr. Seged is not barred from relief under 8 U.S.C. § 1252(g).

In its return, the government contends that Mr. Seged's claim is barred by 8 U.S.C. § 1252(g). Dkt. 6 at 3–4. But its argument is unavailing.

Section 1252(g) states that, except as otherwise provided in § 1252, “no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.” 8 U.S.C. § 1252(g). The government argues that, since Mr. Seged's claims of unlawful detention “necessarily arise from the Department of Homeland Security's decision to commence removal proceedings,” § 1252(g) precludes any relief for Mr. Seged. Dkt. 6 at 3–4. Not so.

As Judge Huie has explained, the Supreme Court has interpreted the language in the jurisdiction-stripping provision of Section 1252(g) narrowly, “limiting it to three discrete actions: the decision or action to *commence* proceedings, *adjudicate* cases, or *execute* removal orders.” *Gao*, 805 F.Supp3d at 1108 (cleaned up) (emphasis in original) (citing *Reno v. Am.-Arab Anti-Discriminations Comm.*, 525 U.S. 471, 482 (1999)). Thus, for the government to prevail, it must argue that Mr. Seged's due process challenge to his detention “arises from” one of those enumerated actions. But, while “it may be argued that this is so in the sense that if those actions had never been taken, [Mr. Seged] would not be in custody at all,” that “expansive interpretation . . . would lead to staggering results.” *Jennings v. Rodriguez*, 583 U.S. 281, 293 (2018) (plurality opinion of Alito, J., joined by Roberts, CJ, and Kennedy, J.).

Here, “[Mr. Seged] is seeking to review the legality of his detention . . . rather than challenging the decision to commence proceedings, the adjudication of his removal case, or an action to execute his removal order.” *Gao*, 805 F.Supp3d at 1109.

Put differently, Mr. Seged seeks to enforce his constitutional right to due process, not the legitimacy of the removal proceedings or any removal order. As such, § 1252(g) does not apply, and this Court has jurisdiction to reach the merits of Mr. Seged's claim. *See Garcia v. Noem*, 803 F.Supp.3d 1064, 1073 (S.D. Cal. Sep. 3, 2025).

B. Mr. Seged's detention has been unconstitutionally prolonged and he is entitled to a bond hearing.

In his petition, Mr. Seged argued that his prolonged detention had deprived him of his due process rights, and asked this Court to grant him a bond hearing. Dkt 1 at 7–8. In response, the government claims that Mr. Seged has no due process right to release from custody at any time. Dkt. 6 at 3–10. It relies on cases that do not support that assertion but instead articulate the entry fiction doctrine regarding Congress's "plenary authority to decide which [noncitizens] to admit" into the country, *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 139 (2020), and *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953).

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

Further, "[t]he *Mezei* Court explicitly grounded its decision in the special circumstances of a national emergency and the determination by the Attorney

General that Mezei presented a threat to national security.” *Rosales-Garcia v. Holland*, 322 F.3d 386, 413–14 (6th Cir. 2003). Here, the problem is that the government has never identified a specific reason why Mr. Seged is a flight risk or a danger. The problem is that he has received no individual evaluation at all.

For instance, the government relies on a recent decision from this district denying a prolonged detention challenge. Dkt. 6 at 10 (citing *Markov v. Larose*, 25-CV-3811 JLS (SBC), 2026 WL 92069 (S.D. Cal. January 13, 2026)). But in a decision issued two weeks after *Markov*, the same judge granted a prolonged detention case where the individual was on appeal at the BIA. *See Fernandes v. Warden*, 25-CV-3813 JLS (MSB), Dkt. 12 (S.D. Cal. January 26, 2026). In that decision, the judge explained:

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

Id. at 4–5. Here, Mr. Seged’s case is still before the Immigration Judge and he is prepared to file an appeal to the BIA and, if necessary, to the Ninth Circuit. *See* First Declaration of Goitom Seged, attached as Exh. A, at ¶ 3. Thus, Mr. Seged’s detention is—and will continue to be—prolonged.

“When deciding whether a petitioner’s continued detention would violate the Due Process clause, many district courts have looked to the factors articulated in *Banda v. McAleenan* [385 F. Supp.3d 1099 (W.D. Wash. 2019).]” *Singh v. LaRose*, 26-CV-0842-BTM-BLM, 2026 WL 684654, at *3 (S.D. Cal. Mar. 10, 2026). These include: (1) the total length of detention to date; (2) the likely duration of future detentions; (3) the conditions of detention; (4) delays in the removal proceedings caused by the detainee; (5) delays in the removal proceedings caused by the

1 government; and the likelihood that the removal proceedings will result in a final
2 order of removal. *See id.* Taken together, those factors weigh in Mr. Seged's favor.

3 First, multiple courts have held that detention has become "prolonged" at, or
4 around, nine months. *See Brissett v. Decker*, 324 F. Supp. 3d 444, 452 (S.D.N.Y. 2018)
5 ("over nine months"); *Perez v. Decker*, No. 18-CV-5279 (VEC), 2018 WL 3991497, at
6 *5 (S.D.N.Y. Aug. 20, 2018) ("more than nine months"); *Masood v. Barr*, No. 19-CV-
7 07623-JD, 2020 WL 95633, at *2 (N.D. Cal. Jan. 8, 2020) ("nearly nine months").
8 This factor therefore favors Mr. Seged.

9 Second, as just noted, Mr. Seged has reason to anticipate significant future
10 detention. Though his asylum application has been pending since December, Mr.
11 Seged's hearing on the merits has been continued repeatedly. *See* Exh. A at ¶ 2.
12 Given that history, it is impossible to predict how many more months will pass
13 before Mr. Seged's application is adjudicated. And he intends to appeal any adverse
14 decision to the BIA and to the Ninth Circuit, if necessary. *Id.* at ¶ 3. All told, "[t]his
15 process may take up to two years or longer." *Banda*, 385 F. Supp. 3d at 1119. Because
16 "Petitioner's future detention can last several more months or even years[.]" this
17 factor favors Mr. Seged. *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL
18 2932654, at *5 (S.D. Cal. Oct. 15, 2025).

19 Third, the conditions of confinement weigh in favor of Mr. Seged.
20 "Petitioner's confinement at [Otay Mesa Detention Center] is 'indistinguishable from
21 penal confinement.'" *Abdul Kadir*, 2025 WL 2932654, at *5 (quoting *Kydyrali*, 499 F.
22 Supp. 3d at 773). What's more, Mr. Seged suffers from medical conditions that have
23 been exacerbated by the conditions of his confinement. *See* Exh. A at ¶ 4 (identifying
24 the mental and physical health challenges Mr. Seged has faced while in custody).

25 Fourth and fifth, Mr. Seged has not caused any unreasonable delays in his
26 removal proceedings. Indeed, his asylum application has been pending for nearly six
27 months at this point. Exh. A at ¶ 2. Despite that, the Immigration Judge has
28 continued the merits from March, to April, to May, and now to June. *Id.* at ¶ 2. None

1 of those continuances were made at Mr. Seged's request. *Id.*

2 Sixth, regarding the likelihood that the removal proceedings will result in a
3 final order of removal, Mr. Seged has a pending asylum claim. At most, this factor is
4 neutral, since this Court is not in a position to evaluate Mr. Seged's claim on the
5 merits. *See Singh*, 2026 WL 684654, at *4.

6 Accordingly, under the *Banda* factors, Mr. Seged is entitled to release or a
7 bond hearing.

8 **CONCLUSION**

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

13 Respectfully submitted,

14
15 Dated: May 22, 2026

s/ Paul A. Barr

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