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[redacted]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CHING TATA PATRICIA WOKIEFIUWE,

Petitioner,

v.

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

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

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

DANIEL A. BRIGHTMAN, Director, San Diego Field Office, Immigration and Customs Enforcement, Enforcement and Removal Operations;

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

Respondents.

CIVIL CASE: 26-CV-2557-BJC

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

INTRODUCTION

In her Amended Petition, Ching Tata Patricia Wokiefiuwe explained she had traveled to the United States border with her husband to request asylum because both of their lives were in imminent danger in Cameroon. Ms. Wokiefiuwe noted that at the time of the Amended Petition, she had been in immigration custody for 7.5 months and that by the time her habeas claims were decided she could be in custody for over nine or ten months. She 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 Ms. Wokiefiuwe'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 Ms. Wokiefiuwe.

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

ARGUMENT

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

Respondent argues that Ms. Wokiefiuwe's requests for relief "necessarily arise from the Department of Homeland Security's decision to commence removal proceedings against him [sic] because that decision unavoidably triggers mandatory detention . . . .until the

conclusion of his [sic] removal proceedings." [Ret. at 4.][1] Respondent concludes that Ms. Wokiefiuwe's 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 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." [*Id.*]

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

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

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[1] Citations to the Respondent's Return are to "Ret." and citations to the Amended Petition are to "AP".

Respondent attempts to expand § 1252(g) by arguing that detention "arises from" the decision to commence removal proceedings. But nearly every immigration detention case could be characterized that way. If accepted, Respondent's position would effectively eliminate habeas review over prolonged detention claims entirely, contrary to longstanding habeas principles and the Supreme Court's recognition that federal courts retain jurisdiction to review challenges to immigration detention. *See Jennings v. Rodriguez*, 583 U.S. 281, 313 (2018) (addressing § 1252(g)); *Demore v. Kim*, 538 U.S. 510 (2003); *Zadvydas v. Davis*, 533 U.S. 678 (2001).

Ms. Wokiefiuwe does not ask this Court to halt removal proceedings, reverse the issuance of the Notice to Appear, or interfere with the government's prosecutorial discretion. She seeks review of whether her ongoing detention comports with the Constitution. Such claims are distinct from the decision to commence proceedings and therefore fall outside § 1252(g).

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

B. <u>Section 1225(b)(1) Does Not Foreclose a Due Process Challenge to Prolonged Detention.</u>

Respondent argues that § 1225(b)(1) categorically forecloses any constitutional limitation on the period or type of detention merely because the statute includes mandatory language and does not expressly provide for bond hearings. [Ret. at 5-9.] It also suggests the holding in *Jennings* forecloses a constitutional challenge to indefinite detention for asylum seekers. [*Id.* at 6-7.] But the lack of a *statutory* bond mechanism does not answer the *constitutional* question. In *Jennings*, the Supreme Court addressed only statutory interpretation

and expressly declined to decide whether prolonged detention under § 1225(b) could violate due process. 583 U.S. at 313. *Jennings* therefore does not hold that detention under § 1225(b)(1) may continue indefinitely without constitutional scrutiny.

And the government's citation to a few district court cases to support the proposition that there is no due process constitutional protection against prolonged detention, is cherry-picking. In her Amended Petition, Ms. Wokiefiuwe cited numerous district court cases holding that immigrants held under § 1225(b) (whatever the subsection) may assert a constitutional claim to due process via a habeas petition. [AP at 9 (*see, e.g., Abdul Kadir v. Larose*, No. 25-CV-1045-LL, at *6 (S.D. Cal. Oct. 15, 2025).] Ms. Wokiefiuwe also cited *Banda v. McAleenan*, which found that "[n]early all district courts that have considered the issue agree that "prolonged mandatory detention pending removal proceedings, without a bond hearing, 'will—at some point—violate the right to due process.' " [AP at 9 (quoting 385 F. Supp. 3d at 1117).] The district court cases cited by Respondent ignore the reality that it is the overwhelming consensus of district courts that petitioners like Ms. Wokiefiuwe can indeed seek constitutional relief under these circumstances.

In fact, the same judge who decided one of the cases cited by Respondent as evidence that there is no due process right to a bond hearing in the § 1225(b)(1) context (*Zelaya-Gonzalez v. Matuszewski*, No. 23-CV-151-JLS, 2023 WL 3103811 (S.D. Cal. April 25, 2023)), more recently filed an order granting a petitioner's request for a bond hearing and explicitly found that "[d]etention under 8 U.S.C. § 1225

must comport with due process."[2] *Mardian v. Mayorkas*, No. 25-CV-3467-JLS, at *4 (S.D. Cal. Jan. 13, 2026)

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

C. Respondent's Misapprehends Ms. Wokiefiuwe's Analysis of the Detention Factors and its Own Analysis is Flawed.

In her Amended Petition, Ms. Wokiefiuwe set forth the five-factors that have become known as the "*Banda* factors" because they were used in *Banda v. McAleenan*, 385 F. Supp. 3d at 1096. [AP 12.] Respondent does not take issue with the use of those factors as a means of determining when an immigration Petitioner's detention becomes unconstitutionally prolonged. Instead, Respondent (1) incorrectly claims that Ms. Wokiefiuwe's argument hinges entirely on the length of detention, and (2) ignores and misconstrues the

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[2] Moreover, directly after citing those cases and suggesting there is a consensus against finding a due process right to a bond hearing, the government cites numerous cases from this district and others that 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, 2023 WL 3028093, at *4 (S.D. Cal. April 20, 2023)

remaining *Banda* factors.

The vast majority of Respondent's brief focuses on why the Court should never arrive at the *Banda* factors. But when the government does touch briefly on those factors near the end of its Return, it begins with a false premise: that Ms. Wokiefiuwe argues she should be released *solely* based on the length of her detention. In reality, Ms. Wokiefiuwe analyzed each *Banda* factor in order in her Amended Petition, addressing not only the significant length of her detention but (1) the likely duration of future detention; (2) delays in proceedings caused by either party; (3) conditions of detention, and (4) likelihood that removal proceedings will result in a different final order.

1. Respondent's Cases

Respondent cites *Sadeqi v. LaRose*, No. 25-CV-2587-RSH, 2025 WL 3154520, at *3 (S.D. Cal. Nov. 12, 2025), and *Markov v. Larose*, 25-CV-3811-JLS, 2026 WL 92069 (S.D. Cal. January 13, 2026), as examples where district courts found that prolonged detention – by itself – does not necessarily warrant a bond hearing. But while the court in *Sadeqi* did briefly note that prolonged detention does not automatically create a due process violation, the court immediately stated thereafter, "But neither does that length of detention serve as a safe harbor or insulate Petitioner's case from constitutional review." 25-CV-2587-RSH, Dock. 13 at *6. And the *Sadeqi* court then proceeded to grant a bond hearing, concluding, "For the reasons argued by Petitioner, the Court finds that Petitioner's detention for over 11 months without a bond hearing under the circumstances of this case—and absent meaningful rebuttal by Respondents of Petitioner's analysis—has become unreasonable and violates due process." *Id.* at

*7.[3]

And the government cites only the first of two orders in the *Markow* case. Not surprisingly, the government cites the order that denied the petition and included language that length of detention standing alone does not render detention unreasonable. 25-CV-3811-JLS, Dock. 6 at *4. But one month later in the same case, the court filed a second order granting the petition and ordering a bond hearing. *Id.* at Dock. 13. The court stated that "Petitioner's length of detention without a bond hearing, now over thirteen months, weighs in Petitioner's favor." *Id.* at *3. Before so finding, the court noted that the petitioner had appealed the removal decision and there was no telling when the appellate process would conclude. *Id.*

In short, the district cases cited by the government on this point are not nearly as conclusive as the government depicts and the courts in both cases granted habeas relief.

2. The Other *Banda* Factors.

More importantly, Ms. Wokiefiuwe is not relying solely on length of detention. The length is certainly prolonged, as she will have been in custody for almost eight months as of the filing of this traverse and it is unknown how long she will remain in custody while the petition is being decided. But Ms. Wokiefiuwe also noted that the likely duration of significant detention beyond these habeas proceedings is substantial. It is unknown how long her Board of Immigration Appeals

[3] In fact, the *Sadeqi* court cited *Hoyos Amado v. U.S. Dep't of Justice*, No. 25-CV-2687-LL, 2025 WL 3079052, (S.D. Cal. Nov. 4, 2025), at * 4, where another judge from this district stated, "Courts have found detention over seven months without a bond hearing weighs toward a finding that it is unreasonable." If seven months is a reasonable yardstick, Ms. Wokiefiuwe has been in custody much longer than that.

case will take to resolve and if she loses there she plans to appeal to the Ninth Circuit. If that happens, she could be looking at additional *years* in immigration custody.

Moreover, any source of delay stems from the government and not from Ms. Wokiefiuwe. Her claim has remained consistent throughout immigration proceedings. But the government complicated matters by sidestepping any determination on the merits of her asylum claim by successfully moving to pretermit asylum proceedings and requesting an order removing her to the third country of Uganda. That decision has not only paused her asylum proceedings but has created an entirely new and novel issue on appeal.

The likelihood that attempting to send Ms. Wokiefiuwe to Uganda will delay proceedings is further supported by the legal resistance such efforts have encountered nationwide. On March 12, 2026, ICE attorneys received an email "directing them to halt motions that would send asylum-seekers to so-called third countries to pursue their claims for protection," including Uganda.[4] The policy of removing individuals to Uganda is also the subject of a pending lawsuit. *See U.T., et al., v. Bondi, et al.*, 20-cv-116-EGS (D.D.C.). The practice of removing non-Ugandans to Uganda is therefore subject to administrative and legal challenges that make actual removal speculative at best. And while 1,100 people have been ordered removed to Uganda in the last five months, less than 1% of those removal orders

[4] *See* "U.S. pauses tactic to deport asylum-seekers to 'third countries,'" *Seattle Times*, March 13, 2026, *available at* https://www.seattletimes.com/seattle-news/u-s-pauses-tactic-to-deport-asylum-seekers-to-third-countries/.

have actually been carried out.[5] These developments stand to make Ms. Wokiefiuwe's appeal(s) only more complex and delayed, which weighs in favor of relief.

In sum, the most important factor is length of detention and that weighs in favor of relief. But that factor is no being considered in a vacuum and the other factors also weigh in favor of relief.

CONCLUSION

For the reasons set forth in her Amended Petition and in this Traverse, Petitioner Ching Tata Patricia Wokiefiuwe 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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[5] *See* "Uganda receives first US deportation flight under third-country agreement," The Guardian, April 2, 2026, *available at* 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