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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ZHONGYI SHENG, Petitioner, v. PATRICK DIVVER, et al. Respondents.	Case No.: 26-cv-02737-RSH-VET **PETITIONER'S TRAVERSE IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS**

A. Petitioner's Habeas Claims Are Not Barred by 8 U.S.C. § 1252(g)

§ 1252 does not apply to bar jurisdiction because this action concerns petitioner's unlawful and prolonged detention. Respondents contend that his is subject to mandatory detention under § 1225(b)(2), and that ICE had authority to continue to detain him.

Here, petitioner does not make *any claim or cause of action arising from any decision to commence or adjudicate removal proceedings or execute removal orders.* Petitioner does not dispute the commencement or any other aspect of his removal proceedings nor does he have a removal order. In short, petitioner challenges nothing related to his removal proceedings – he challenges his continued prolonged detention by the government in violation of her Due Process rights. Therefore, the jurisdictional bar under § 1252(g) does not apply here. In short, this action concerns the unlawful detention of petitioner and the Supreme Court and Ninth Circuit have rejected Respondents' claim that § 1252(g) covers all claims arising from removal proceedings or imposes a general jurisdictional bar. *See Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19, 140 S. Ct. 1891, 207 L. Ed. 2d 353 (2020); see also *Arce v. United States*, 899 F.3d 796, 800 (9th Cir. 2018) ("[W]e have limited [§ 1252(g)]'s jurisdiction-stripping power to actions challenging the Attorney General's discretionary decisions to initiate proceedings, adjudicate cases, and execute removal orders.")

B. The Due Process Clause Limits the Duration of Mandatory Detention

Supreme Court jurisprudence makes clear that prolonged immigration detention without a bond hearing raises serious constitutional concerns. In *Zadvydas*, the Court addressed a challenge to 8 U.S.C. § 1231(a)(6), which appeared to authorize the indefinite detention of noncitizens subject to final removal orders. 533 U.S. at 682. It held interpreting the statute to "permit[] indefinite detention . . . would raise a serious constitutional problem"

because "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects. " *Id.* at 690. To avoid that constitutional concern, the Court construed the statute to contain "an implicit '[presumptively] reasonable time' limitation" of six months. Id. at 682, 701.

Denying Sheng a forum to challenge his prolonged detention would raise a "serious constitutional question" under *Webster v. Doe*, 486 U.S. 592, 603 (1988). As a judge in this district recognized in *Domingo-Ros v. Archambeault*, No. 25-cv-1208-DMS-DEB, 2025 WL 27541, at *2 (S.D. Cal. May 18, 2025), statutes cannot be construed to deny any judicial forum for a colorable constitutional claim. Sheng's claim that his detention violates substantive due process is precisely such a claim.

Subsequent Supreme Court cases have declined to impose specific time limits on immigration statutes that mandate detention but have upheld the *Zadvydas* principle that the Constitution imposes limits on indefinite detention without a bond hearing. *Demore v. Kim*, 538 U.S. 510 (2003), involved a due process challenge to § 1226(c), which mandates detention during removal proceedings for noncitizens convicted of certain crimes. In *Demore*, the Court distinguished *Zadvydas* on the ground that, unlike the "'indefinite' and 'potentially permanent'" detention at issue there, detention under § 1226(c) has an "obvious termination point" —the conclusion of removal proceedings— and typically ranged from forty-seven days to four months. *Id.* at 528–29. Because of the finite and relatively brief duration of § 1226(c) detention, the Court concluded that the statute did not on its face violate the Due Process Clause. See id. at 529–31. Justice Kennedy's concurrence underscored, however, that due

process may require "an individualized determination as to [a noncitizen's] risk of flight and dangerousness if the continued detention [becomes] unreasonable or unjustified." Id. at 532.

In *Jennings*, the Court rejected the Ninth Circuit's conclusion that certain immigration detention statutes mandating detention implicitly required bond hearings after six months. 583 U.S. at 286. In doing so, however, it left open the underlying questions of whether the Due Process Clause independently imposes limits on prolonged detention without a bond hearing, and when those limits are exceeded. Id, *Rodriguez v. Marin*, 909 F.3d 252, 255 (9th Cir 2018).

Consistent with these Supreme Court cases, the Ninth Circuit has repeatedly recognized that statutes authorizing prolonged immigration detention without a bond hearing raise "serious constitutional concerns." *Casas-Castrillon v. Dep't of Homeland Sec.*, 535 F.3d 942, 944, 950 (9th Cir. 2008), abrogated on other grounds by *Jennings*, 583 U.S. 281 (finding that "prolonged detention [under § 1226(a)] must be accompanied by . . .a hearing to establish whether releasing the alien would pose a danger to the community or a flight risk"); *Diouf v. Napolitano* ("*Diouf II*"), 634 F.3d 1081, 1084 (9th Cir. 2011) ("We hold that individuals detained under § 1231(a)(6) are entitled to the same procedural safeguards against prolonged detention as individuals detained under § 1226(a)."); *see also Rodriguez v. Robbins*, 715 F.3d 1127, 1137, 1144 (9th Cir. 2013) (prolonged detention under §§ 1225(b) and 1226(c) without a bond hearing would be "constitutionally doubtful"); *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1114 (W.D. Wash. 2019) (collecting 9t Circuit cases recognizing prolonged detention without adequate procedural protections would raise "serious constitutional concerns").

In these cases, the Court emphasized that the constitutional concerns arise from the extended duration of detention combined with the absence of opportunity to challenge the

government's justifications for continued confinement. Taken together, these Supreme Court and Ninth Circuit decisions make clear that trial courts must assess on a case-by-case basis whether detention without a bond hearing has exceeded constitutional limits, regardless of whether such detention is mandated by statute. Contrary to Respondents' assertions, neither Sheng's purported status as an "arriving alien" nor his detention under § 1225(b) forecloses a due process challenge to the lawfulness of his detention. *DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020), the Supreme Court case that the government relies on to make this argument, rejected an asylum seeker's claim that the Due Process Clause entitled him to additional avenues to challenge his expedited removal beyond those provided by statute. *Thuraissigiam* held that (1) the asylum seeker's claim fell outside the scope of habeas jurisdiction because he sought "the opportunity to remain lawfully in the United States" rather than release from custody; and (2) the asylum seeker was not entitled to additional process beyond what the detention statute affords for contesting removability. *See id.* at 119, 140.

This case is different. Sheng does not invoke due process to challenge the outcome of his removal proceedings or seek additional procedural steps to appeal his removability. Instead, he seeks relief from detention pending the resolution of those proceedings—a request squarely within the traditional scope of habeas jurisdiction. *See Preiser*, 411 U.S. at 484 ("[T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and . . . the traditional function of the writ is to secure release from illegal custody."). Accordingly, consistent with the many district courts that have addressed this issue, this Court should conclude that Sheng may invoke due process challenges to the lawfulness of his prolonged detention without a bond hearing. *See, e.g., A.L. v. Oddo*, 761 F. Supp. 3d 822, 825

(W.D. Pa. 2025) ("Nowhere in [*Thuraissigiam*] did the Supreme Court suggest that arriving aliens being held under § 1225(b) may be held indefinitely and unreasonably with no due process implications, nor that such aliens have no due process rights whatsoever."); *Sadeqi v. LaRose*, 809 F. Supp. 3d 1090, 1093 (S.D. Cal. 2025) (collecting cases).

Recently, courts in this district have applied the same reasoning as the majority of courts, holding that a petitioner detained under §1225(b)(1) may assert a due process challenge to prolonged mandatory detention. *Mingzhi Gao v. Larose*, 25-cv-2084-RSH-SBC, 2025 WL 495253 (S.D. Cal. Sep. 26, 2025); *Sadeqi v. Larose*, 25-cv-2587-RSH-BJW, (S.D. Cal. Nov. 12, 2025); *Faizi v. Larose*, 25-cv-2974-JO-MSB, (S.D. Cal. Nov. 13, 2025); *Elikaei v. Larose*, 3:25-cv-03219-DMS-AHG, (S.D. Cal. Dec. 10, 2025); *Dogan v. Larose*, 3:25-cv-03525-DMS-BJW, (S.D. Cal. Dec. 23, 2025); *Ramos Villanueva v. Larose*, 3:25-cv-03679-CAB-SBC, (S.D. Cal. Jan. 26, 2026); *Safinejad v. Larose*, 3:25-cv-00531-JES-AHG, (S.D. Cal. Feb. 3, 2026) (collecting cases).

Lastly, *Mezei*[1] also does not help the government as this case does not involve particularized national security risks or emergency regulations, as in *Mezei*, 345 U.S. at 214-16. *See Jennings v. Rodriguez*, 583 U.S. 281, 340 (2018) (Breyer, J., dissenting); *Jean v. Nelson*, 472 U.S. 846, 872 (1985) (Marshall, J., dissenting); *Mezei*, 345 U.S. at 217 (Black, J., dissenting). The government has failed to articulate any particularized national security risks that Petitioner may pose.

[1] The Court held that the Attorney General's continued exclusion of the alien without a hearing does not amount to an unlawful detention, and courts may not temporarily admit him to the United States pending arrangements for his departure abroad.

C. Sheng's Detention Has Become "Unreasonably Prolonged" Which Without a Bond Hearing Violates Due Process

Sheng's prolonged detention without a bond hearing has violated his right to due process—under the balancing framework set forth in *Mathews v. Eldridge*, 424 U.S. 319, 321 (1976). *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (noting courts in the Ninth Circuit "have regularly applied *Mathews* to due process challenges to removal proceedings"); *Aceros v. Kaiser*, No. 25-cv-06924-EMC, 2025 WL 2637503, at *5 (N.D. Cal. Sept. 12, 2025) (collecting cases applying *Mathews* in this context). Under that framework, courts consider (1) the private interest affected by the government action; (2) the risk of erroneous deprivation of that interest under the procedures used; and (3) the government's interest, including the fiscal and administrative burdens that additional procedures would entail. *See id.* at *6. In cases involving prolonged immigration detention without a bond hearing, only certain of these factors require individualized analysis.

Across the board, the private interest at stake will be the noncitizen's fundamental interest in freedom from physical restraint. *See Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017). And where the government has provided no process to determine whether continued detention is justified, the risk of erroneously depriving an "individual's constitutionally protected interest in avoiding physical restraint" is obvious. *Singh v. Andrews*, 803 F. Supp. 3d 1035, 1047 (E.D. Cal. 2025) (*quoting Zadvydas*, 533 U.S. at 690, emphasis omitted). The remaining inquiry therefore focuses on the extent of Respondents' intrusion on Sheng's liberty interest and their interest in continuing that detention without a bond hearing.

In determining the magnitude of the government's incursion into Sheng's

individual liberty, courts examine both the duration of his detention to date and his likely future detention. *Demore*, 538 U.S. at 529–30 (considering the expected duration of confinement in deciding whether certain statutory detentions without a bond hearing exceeded constitutional limits); *see also Banda*, 385 F. Supp. 3d at 1120 (collecting cases evaluating the likely duration of confinement in determining whether detention without a bond hearing violated due process). Here, Sheng has been detained for a period of over six months. This substantial period of detention—caused largely by administrative delays outside his control— although in their Return, Respondents contend that Petitioner's matter was continued three times at his request, Petitioner respectfully submits that those delays (to seek legal counsel and time to prepare his relief application should not be attributed to him as Petitioner has the right to be afforded time to retain counsel per his constitutional rights and to prepare against his removal) — is likely to be followed by additional months or years of administrative review before the BIA and potential judicial review in the Ninth Circuit.

Even before *Jennings*, courts recognized detention became unreasonably prolonged at six months. Appling the canon of "constitutional avoidance," the Ninth Circuit has ruled that "[a]s a general matter, detention is prolonged when it has lasted six months and is expected to continue more than minimally beyond six months." *Diouf v. Napolitano*, 634 F. 3d 1081, 1092 (9th Cir. 2011). Specifically addressing mandatory detention, the court found detention at six months was "prolonged" requiring an "automatic individualized bond hearing[]" at which the government bore the burden of persuasion as to why detention should continue. *Rodriguez v. Robbins*, 804 F.3d 1060 (9th Cr. 2015), *rev'd sub nom. Jennings*, 583 U.S. 281 (2018).

Other circuits had similarly adopted a six-month benchmark for when detention becomes constitutionally problematic. In *Lora v. Shanahan*, 804 F.3d 601 (2nd Cir. 2015), *cert. granted, judgment vacated*, 583 U.S. 1165 (2018), the court observed that "every other circuit to have considered this issue" determined that bond hearings were required after six months. *Lora v. Shanahan* at 606. *See also Ly v. Hansen*, 351 F.3d 263, 275 (6th Cir. 2003). In 2018, in *Jennings*, the Court reversed the *Rodriguez* holding that automatic bond hearings are mandated every six months as a matter of constitutional avoidance. But it left open the application of due process as *applied* in specific cases.

The government has not demonstrated that its interests in detaining Sheng without a bond hearing outweigh the risk of wrongfully subjecting an individual to a liberty deprivation of this magnitude. In assessing the government's interest, the regulatory "function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail" is weighed. *Mathews*, 424 U.S. at 335. The government's regulatory interests in civil immigration detention include ensuring a noncitizen's appearance at removal proceedings and protecting the public. *See Zadvydas*, 533 U.S. at 690. Any civil detention must "bear some reasonable relation" to these regulatory purposes. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). Here, the government neither has a regulatory interest in detaining Sheng nor faces fiscal and administrative burdens that justify withholding a bond hearing.

Sheng has no criminal history, does not pose a danger to the community, or present any flight risk, and the government has not articulated any other individualized justification for his continued detention. In fact, prior to being detained, Sheng had lawfully entered the country

and had an asylum application pending before the Los Angeles Asylum office, together with his wife and children who continue to reside in the United States. The only reason that Sheng has ended up in detention is because of the fateful mistake of relying on a GPS App when he was taking a passenger to San Diego while working as an Uber drive, which caused him to inadvertently briefly exit the U.S. border with Mexico. ECF. 1, ¶ 20. Nothing has changed since his previous three years' residence in the U.S, that indicates that he is now a flight risk or danger to the community.

Sheng has resided in this country for over three years, has violated no laws, has timely filed his asylum applicant, and has not engaged in any type of behaviors that would indicate that he is a flight risk or danger to the community. In fact, Sheng was gainfully employed and had built extensive community ties in the U.S. and has demonstrated that he is in fact not a flight risk or a danger to the community. Moreover, Sheng's present health conditions and the facility's inability or lack of capacity to address those conditions further support his prolonged detention claim. See *Banda v. McAleenan*, 385 F. Supp. 3d 1099 (W.D. Wash. 2019) (one of the *Banda* six-fact balancing test is "conditions of detention."). Nor has the government argued or provided any evidence regarding the administrative or fiscal burdens that a bond hearing would entail.[2] See Gov't Opp. Yet Sheng has been confined for over six months and

[2] As the Ninth Circuit has acknowledged, the cost to the public of detaining noncitizens is "staggering," *Hernandez*, 872 F.3d at 996—an average of $187.48 per adult detainee per day as of fiscal year 2023. U.S. Immigration and Customs Enforcement, *Fiscal Year 2025 Congressional Justification* 26 (2024), https://www.dhs.gov/sites/default/files/2024-04/2024_0308_us_immigration_and_customs_enforcement.pdf (last visited Apr. 23, 2026). With more than 72,000 individuals in ICE custody nationwide as of January 2026, the aggregate cost of immigration detention amounts to $13.50 million per day, or roughly $4.93 billion annually. *See* U.S. Immigration and Customs Enforcement, *Detention FY 2026 YTD,*

counting and may remain detained for months or years longer while his removal proceedings—which have been repeatedly delayed through no fault of his own. Under these circumstances, Sheng has suffered and will continue to suffer a substantial deprivation of liberty with no opportunity to contest his detention, despite the absence of any legitimate government interest to justify this deprivation.

Accordingly, the Court should find that Sheng's detention has become unreasonably prolonged in violation of the Due Process Clause of the Fifth Amendment and order his immediate release from custody subject to the conditions of his preexisting status; and order that, prior to any re-detention, he receive notice of the same and a hearing before a neutral decisionmaker to determine whether detention is warranted.

In the alternative, the Court should order an individualized bond hearing before a neutral immigration judge forthwith, and to justify any continued detention, the government must carry the burden to "prove by clear and convincing evidence that an alien is a flight risk or a danger to the community to justify denial of bond." *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011), abrogated on other grounds by *Jennings*, 583 U.S. 281; *Gao*, 805 F. Supp. 3d at 1112 (explaining that "the substantial liberty interest at stake" in a prolonged detention case warranted placing the burden on the government at a bond hearing) (citation omitted).

Alternatives to Detention FY 2026 YTD and Facilities FY 2026 YTD, Footnotes (2026), https://www.ice.gov/detain/detention-management (ICLOS and detainees tab, total at end of January) (last visited Feb. 16, 2026). By comparison, the cost and burden of providing a bond hearing is "minimal." *Doe v. Becerra*, 787 F. Supp. 3d 1083, 1094 (E.D. Cal. 2025). The government has long afforded noncitizens bond hearings pursuant to 8 U.S.C. § 1226(a), and DHS has an established framework for doing so that it can readily apply here. *See Hyppolite v. Noem*, 808 F. Supp. 3d 474, 493 (E.D.N.Y. 2025).

Dated: May 13, 2026,

By: */s/ Bashir Ghazialam*
Bashir Ghazialam
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CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2026, I caused the foregoing document to be electronically filed with the Clerk of the Court for the United States District Court for the Southern District of California by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

Executed on: May 13, 2026

/s/ Bashir Ghazialam
Bashir Ghazialam