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DETAINED

8 Attorney for Respondent

9
10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT

12 NGUYEN, Manh Tuan

13 Petitioner,

Case No. 26-cv-3067-BJC-BJW

14 v.

**TRAVERSE FOR WRIT OF
HABEAS CORPUS**

15 MARKWAYNE MULLIN, Secretary of the
16 Department of Homeland Security, PAMELA
17 JO BONDI, Attorney General, TODD M.
18 LYONS, Acting Director, Immigration and
19 Customs Enforcement, JESUS ROCHA, Acting
20 Field Office Director, San Diego Field Office,
21 CHRISTOPHER LAROSE, Warden at Otay
22 Mesa Detention Center,

23 Respondents.
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I. INTRODUCTION

Respondents' Return misframes this case. Petitioner Manh Tuan Nguyen does not challenge the Government's decision to place him in removal proceedings, the adjudication of his asylum claim, or the merits of the removal order. He challenges one thing only: his continued physical detention — now more than six months — without ever receiving a single individualized hearing on whether he poses any danger or flight risk. That is a due process claim about the constitutionality of his confinement, and it is squarely within this Court's jurisdiction.

This Court has already rejected the core of Respondents' position. In *D.D. v. LaRose*, No. 25-cv-02581-BJC-JLB (S.D. Cal. Oct. 22, 2025), this Court held that the identical § 1252(g) jurisdictional argument fails, that prolonged mandatory detention without a bond hearing raises real due process concerns, and that the governing framework is the three-factor test of *Lopez v. Garland*, 631 F. Supp. 3d 870 (E.D. Cal. 2022). Respondents' Return recycles the same jurisdictional argument and the same out-of-circuit authority this Court already found unpersuasive.

Mr. Nguyen prevails under that framework because his case differs from *D.D.* in the decisive respect: his future detention is no longer speculative. Unlike the petitioner in *D.D.*, whose merits hearing had not yet occurred, Mr. Nguyen has already been denied relief, ordered removed, and has an appeal pending before the Board of Immigration Appeals, with Ninth Circuit review to follow. He faces many additional months — likely years — of confinement, with no end reasonably in sight and no hearing ever held. The Court should grant the writ.

II. THIS COURT HAS JURISDICTION; § 1252(g) DOES NOT BAR REVIEW.

1 Respondents’ lead argument that 8 U.S.C. § 1252(g) strips this Court of jurisdiction is the same
2 argument this Court rejected in *D.D.* Section 1252(g) bars review only of three discrete
3 discretionary decisions: to “commence proceedings, adjudicate cases, or execute removal
4 orders.” The Supreme Court has held the provision must be read narrowly and does “not apply to
5 every decision or action that may be a part of the deportation process.” *Reno v. American-Arab*
6 *Anti-Discrimination Committee*, 525 U.S. 471, 482 (1999). The Ninth Circuit recently reaffirmed
7 that § 1252(g) is a “discretion-protecting provision” that does not divest courts of jurisdiction
8 over legal challenges not implicating the Attorney General’s discretionary charging decisions.
9 *Ibarra-Perez v. United States*, 154 F.4th 989, 995 (9th Cir. 2025).

10 Applying exactly this authority, this Court held in *D.D.* that a challenge to “mandatory detention
11 without a bond hearing as unconstitutional[] is merely collateral to, but does not arise from[,] the
12 decision to commence and adjudicate proceedings.” That holding controls here. A detention
13 challenge does not contest the charging decision; it contests the lawfulness of confinement. *See*
14 *Gao v. LaRose*, No. 25-CV-2084-RSH-SBC, 2025 WL 2770633 (S.D. Cal. Sept. 26, 2025);
15 *Garcia v. Noem*, No. 25-CV-02180-DMS-MMP, 2025 WL 2549431, at *4 (S.D. Cal. Sept. 3,
16 2025); *Nguyen v. Fasano*, 84 F. Supp. 2d 1099, 1104 (S.D. Cal. 2000).

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18 Notably, Respondents themselves cite *Ibarra-Perez* in their Return for an unrelated proposition,
19 while ignoring its core holding that § 1252(g) is read narrowly in favor of judicial review. The
20 out-of-circuit district court decisions Respondents rely upon — *Wang* and *Herrera-Correa* —
21 are the same kind of authority this Court already declined to follow in *D.D.*, noting it was “not
22 persuaded by district court cases outside the Ninth Circuit.” This Court has jurisdiction under 28
23 U.S.C. § 2241.

1 incarceration,” and grounding that holding in *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), and
2 *Rodriguez v. Marin*, 909 F.3d at 256.

3 *Thuraissigiam* does not require a different result. That decision concerned the procedures due in
4 the *determination of an asylum and removal claim* — specifically, the scope of habeas review of
5 an expedited-removal screening — not a freestanding challenge to the duration of civil detention.

6 It did not hold that an arriving noncitizen may be held indefinitely without any custody review.

7 And *Zadvydas* itself distinguished *Mezei* and recognized that civil detention is constitutionally
8 permissible only in “certain special and narrow nonpunitive circumstances.” 533 U.S. at 690.

9 Consistent with this, numerous district courts in this Circuit have, after *Thuraissigiam*, continued
10 to hold that prolonged § 1225(b) detention without a bond hearing violates due process. *See, e.g.*,
11 *Banda v. McAleenan*, 385 F. Supp. 3d 1099 (W.D. Wash. 2019); *Gao*, 2025 WL 2770633.

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13 At a minimum, the question is unsettled and the better-reasoned authority — including this
14 Court’s own analysis in *D.D.* — recognizes a due process limit on the duration of mandatory
15 detention. The Court need not resolve the abstract reach of the entry-fiction doctrine to decide
16 this case; it need only apply the *Lopez* framework it has already adopted.

17
18 **V. UNDER LOPEZ, PETITIONER’S DETENTION IS UNREASONABLY
PROLONGED.**

19 This Court applies the three *Lopez* factors: (1) the total length of detention; (2) the likely duration
20 of future detention; and (3) delays caused by the petitioner and the government. *Lopez*, 631 F.
21 Supp. 3d at 879. Although Mr. Nguyen’s current length of detention, standing alone, is
22 comparable to that in *D.D.*, the second and third factors decisively distinguish this case and tip
23 the balance in his favor.

1 **A. The likely duration of future detention strongly favors relief and distinguishes this case**
2 **from D.D.**

3 This is the dispositive difference. In *D.D.*, the Court found the future-duration factor weighed
4 against the petitioner precisely because his merits hearing had not yet occurred — indeed, the
5 immigration judge had *advanced* it — so any future detention was “speculation” the Court
6 declined to credit. Mr. Nguyen’s posture is the opposite. His merits hearing has already been
7 held. He has already been denied relief and ordered removed. And he has *already filed* an appeal
8 to the Board of Immigration Appeals, which remains pending.

9 The future detention Mr. Nguyen faces is therefore not speculative — it is a concrete, already-
10 commenced appellate track. BIA appeals routinely take many months to over a year, and if the
11 BIA affirms, Mr. Nguyen intends to seek review in the Ninth Circuit, which routinely adds one
12 to three years. Courts in this district treat this anticipated appellate timeline as a central
13 consideration in assessing total likely detention. The very fact that rendered the future-duration
14 factor speculative in *D.D.* — a not-yet-held merits hearing — is now resolved against continued
15 detention here. This factor weighs heavily in Mr. Nguyen’s favor.

16 **B. The delay factor favors Petitioner, or is at worst neutral.**

17 Respondents contend Mr. Nguyen caused roughly three months of delay through continuance
18 requests. The record does not bear the weight Respondents place on it, and in any event the law
19 does not count such delay against him.

20 First, the operative source of ongoing and future delay is now the BIA appeal. Pursuing an
21 appeal of an adverse removal order cannot be held against a detainee; “pursuit of relief from
22 removal does not, in itself, undermine a claim that detention is unreasonably prolonged.” *Brissett*
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1 *v. Decker*, 324 F. Supp. 3d 444, 453 (S.D.N.Y. 2018). Were it otherwise, every noncitizen who
2 exercised the right to seek relief would forfeit any due process limit on detention.

3 Second, the continuances during the merits phase were brief and reasonable. The early resets
4 reflected routine application filing and case preparation. When the immigration judge offered a
5 merits hearing roughly one week out before a visiting judge, counsel reasonably sought modest
6 additional time to prepare and submit supporting evidence — ordinary diligence, not dilatory
7 tactics. And the continuance from March 17, 2026 was caused by the court’s inability to secure
8 an interpreter, not by any request of Mr. Nguyen. From his detention on November 10, 2025 to
9 his merits hearing on April 27, 2026 — under six months — his case proceeded expeditiously for
10 a contested asylum matter.

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12 Notably, in *D.D.* this Court found the delay factor *neutral* even though the government took
13 three months to provide the first hearing and the immigration judge continued the case multiple
14 times. The same factor is at least neutral here, and the post-merits posture — where the delay is
15 now driven by the appeal — tilts it toward Mr. Nguyen.

16 **C. The total length of detention, viewed with the trajectory, supports relief.**

17 Mr. Nguyen has been detained more than six months with no individualized hearing of any kind.
18 While this Court declined in *D.D.* to adopt a bright-line six-month rule, it recognized that courts
19 “become extremely wary of permitting continued custody absent a bond hearing” as detention
20 lengthens, and that prolonged detention concerns are “inextricably linked to the length of
21 incarceration.” The proper measure is not the snapshot today but the total anticipated
22 confinement: a detention already past six months that will, on the current appellate trajectory,
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1 extend well beyond a year and likely into multiple years. Measured correctly, the length factor
2 supports relief.

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4 **D. The punitive conditions of confinement reinforce the constitutional concern.**

5 Civil immigration detention is permissible only as a nonpunitive measure. *Zadvydas*, 533 U.S. at
6 690. Yet conditions at Otay Mesa are functionally indistinguishable from criminal incarceration:
7 secure walls, facility-issued uniforms, continuous guard supervision, and severely restricted
8 movement and contact with the outside world. Mr. Nguyen is subjected to these conditions
9 despite having no criminal history whatsoever and despite the civil, regulatory nature of his
10 detention. The longer such confinement continues without any hearing, the harder it is to justify
11 as nonpunitive.

12 **VI. THE IMMIGRATION JUDGE'S CREDIBILITY FINDING IS IRRELEVANT TO
13 THIS DETENTION CLAIM.**

14 To the extent Respondents rely on the immigration judge's adverse credibility finding, it has no
15 bearing on the question before this Court. The *Lopez* inquiry asks whether continued detention
16 without a bond hearing is constitutionally reasonable — it does not adjudicate the strength of the
17 underlying asylum claim. Detention is not a sanction for a weak or even a denied claim; civil
18 detention must be justified by danger or flight risk, determined through individualized process.
19 The merits of the removal order are pending before the BIA and are not properly resolved here.
20 Whatever the ultimate outcome of the asylum claim, Mr. Nguyen remains entitled to an
21 individualized determination of whether his continued confinement is justified — a
22 determination no adjudicator has ever made.

23 **VII. CONCLUSION AND RELIEF REQUESTED**

1 For the foregoing reasons, Petitioner respectfully requests that the Court grant the writ and order
2 the following relief:

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- 4 1. Order Petitioner's release from custody on his own recognizance or under reasonable
5 conditions of supervision; or
 - 6 2. In the alternative, conduct its own individualized custody hearing to determine whether the
7 Government can establish by clear and convincing evidence that Petitioner is a danger or a flight
8 risk; or
 - 9 3. At minimum, order a bond hearing before an immigration judge within fourteen days at
10 which the Government bears the burden of proving by clear and convincing evidence that
11 Petitioner is a danger to the community or a flight risk, and at which the absence of a final
12 hearing date or general scheduling concerns may not be the basis for denying release; and
 - 13 4. Grant such other relief as the Court deems just and proper.
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17 DATED this 2nd of June, 2026.

18 /s/ Morris Jacob Wilner
19 MORRIS JACOB WILNER
20 *Attorney for Petitioner*

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