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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

XU YINGWU,  
Immigration File No.



Petitioner,

v.

Todd M. Lyons, Acting Director of U.S.  
Customs and Border Protection; Christopher  
LaRose, acting warden of the Otay Mesa  
Correctional detention center; MW Mullin,  
DHS Secretary; Todd Blanche, U.S. Attorney  
General

Respondents.

Case No. 26-cv-03140-BAS-JLB

PETITIONER'S REPLY AND  
TRAVERSE TO RESPONDENTS'  
RETURN TO PETITION FOR WRIT OF  
HABEAS CORPUS

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## I. INTRODUCTION

Petitioner Xu Yingwu respectfully submits this Reply and Traverse in response to Respondents' Return to Petition for Writ of Habeas Corpus. Respondents' opposition fails for three principal reasons.

First, this Court possesses habeas jurisdiction under 28 U.S.C. § 2241 to review Petitioner's constitutional challenge to his ongoing detention. Petitioner does not challenge any discretionary decision to commence removal proceedings or execute a removal order. Rather, he challenges the constitutionality of his continued mandatory detention without an individualized bond hearing. Such claims fall outside the narrow jurisdictional limitation contained in 8 U.S.C. § 1252(g).

Second, Respondents misread *Jennings v. Rodriguez*, 583 U.S. 281 (2018). *Jennings* addressed only statutory interpretation and expressly declined to resolve the constitutional questions concerning prolonged mandatory detention without bond hearings. The Supreme Court remanded those constitutional claims for further consideration.

Third, even where detention is initially authorized under 8 U.S.C. § 1225(b), due process imposes constitutional limitations on the duration and nature of civil immigration detention. Physical presence in the United States—even for arriving noncitizens—triggers constitutional protections against arbitrary executive detention. Petitioner seeks only the minimum process required by the Fifth Amendment: an individualized custody hearing before a neutral immigration judge.

Accordingly, the Petition should be granted, or alternatively, this Court should order Respondents to provide Petitioner with an individualized bond hearing within a reasonable time.

## II. SUMMARY OF RESPONDENTS' POSITION

Respondents argue that: (1) 8 U.S.C. § 1252(g) strips this Court of jurisdiction; (2) Petitioner's detention is mandatory under 8 U.S.C. § 1225(b)(1)(B)(ii); and (3) Petitioner possesses no constitutional right to a bond hearing because he is an arriving noncitizen seeking admission.

Respondents' arguments improperly expand § 1252(g), misapply *Jennings*, and ignore longstanding constitutional limits on executive detention.

## III. ARGUMENT

### A. This Court Retains Habeas Jurisdiction Over Petitioner's Constitutional Detention Challenge.

Federal district courts retain jurisdiction under 28 U.S.C. § 2241 to review constitutional challenges to immigration detention. The Supreme Court has repeatedly recognized that habeas corpus remains available absent a clear and unambiguous congressional suspension.

In *Boumediene v. Bush*, 553 U.S. 723, 745 (2008), the Supreme Court reaffirmed that the writ of habeas corpus protects against unlawful executive detention. Likewise, the Supreme Court has consistently entertained habeas challenges to immigration detention. See *Zadvydas v. Davis*, 533 U.S. 678, 687–88 (2001); *Demore v. Kim*, 538 U.S. 510, 516–17 (2003).

Petitioner does not seek review of any removal order. Nor does he seek review of prosecutorial discretion regarding whether removal proceedings should commence. Instead, Petitioner challenges the legality and constitutionality of his continuing physical detention without an individualized determination of flight risk or dangerousness.

Such claims remain reviewable through habeas corpus. See *Jennings*, 583 U.S. at 298 (“Respondents are not asking for review of an order of removal; they are challenging the extent of their detention.”).

Nothing in § 1252(g) clearly eliminates habeas jurisdiction over constitutional detention claims.

**B. Section 1252(g) Does Not Bar Review of Petitioner’s Challenge to Prolonged Mandatory Detention.**

Respondents incorrectly argue that § 1252(g) strips jurisdiction because Petitioner’s detention allegedly “arises from” the commencement of removal proceedings.

The Supreme Court has narrowly construed § 1252(g). In *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999), the Court explained that § 1252(g) applies only to “three discrete actions” by the Executive: the decision or action to commence proceedings, adjudicate cases, or execute removal orders.

The Supreme Court specifically rejected expansive interpretations of § 1252(g). *Id.* at 482 (“The provision applies only to three discrete actions that the Attorney General may take.”).

Petitioner’s challenge does not seek review of the government’s decision to commence proceedings. Instead, Petitioner challenges the constitutionality of his continuing detention without procedural safeguards.

The Ninth Circuit similarly recognizes that § 1252(g) must be construed narrowly. See *Sissoko v. Rocha*, 509 F.3d 947, 949–50 (9th Cir. 2007) (holding § 1252(g) does not bar

claims that are collateral to removal proceedings); *Padilla-Ramirez v. Bible*, 862 F.3d 881, 885 (9th Cir. 2017).

Respondents rely primarily on unpublished district court decisions that conflict with the Supreme Court's narrow interpretation of § 1252(g). Those nonbinding cases cannot override *Reno* or binding Ninth Circuit authority.

Importantly, habeas review of detention claims has continued after enactment of § 1252(g). See *Demore*, 538 U.S. at 516–17; *Jennings*, 583 U.S. at 298.

If Respondents' position were correct, neither *Demore* nor *Jennings* could have been heard.

### C. Petitioner's Indefinite Mandatory Detention Without an Individualized Bond Hearing Violates Due Process.

Civil immigration detention is subject to constitutional limitations. The Due Process Clause prohibits arbitrary detention and requires adequate procedural safeguards when liberty is restrained.

In *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), the Supreme Court emphasized that “[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.”

Likewise, in *Demore v. Kim*, 538 U.S. 510, 532–33 (2003), the Supreme Court upheld mandatory detention under § 1226(c) only because such detention was generally brief and had a definite termination point.

Here, Petitioner faces potentially prolonged detention with no meaningful procedural mechanism to challenge continued confinement. Respondents provide no definite timeline for completion of proceedings.

District courts throughout the Ninth Circuit recognize that prolonged detention without an individualized bond hearing raises serious constitutional concerns. See *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 773 (S.D. Cal. 2020); *Sibomana v. LaRose*, No. 22-cv-933-LL-NLS, 2023 WL 3028093, at \*4 (S.D. Cal. Apr. 20, 2023).

Respondents repeatedly emphasize that Petitioner has presently been detained for approximately two months. But due process analysis is not mechanically limited to elapsed time alone. Courts also consider the likely duration of future detention and whether detention has become unreasonable in relation to its civil purpose. *Lopez*, 631 F. Supp. 3d at 879.

Petitioner's proceedings remain ongoing, no merits hearing has occurred, and there is no guarantee proceedings will conclude promptly. Immigration proceedings frequently extend for many months or years.

Moreover, mandatory detention without any individualized assessment fundamentally conflicts with due process principles. The government has made no showing that Petitioner presents either a flight risk or a danger to the community.

D. Jennings Did Not Decide the Constitutional Question Presented Here.

Respondents mischaracterize Jennings as conclusively resolving the constitutionality of prolonged detention under § 1225(b).

Jennings addressed only whether the immigration detention statutes could be interpreted to require periodic bond hearings as a matter of statutory construction. Jennings, 583 U.S. at 299–305.

The Supreme Court expressly declined to decide the constitutional questions. *Id.* at 305 (“We do not reach the merits of respondents’ constitutional arguments.”).

Indeed, the Supreme Court remanded the constitutional claims for further consideration by the Ninth Circuit. *Id.* at 314.

Thus, Jennings does not foreclose Petitioner's constitutional challenge. Rather, Jennings confirms that constitutional questions concerning prolonged detention remain unresolved and subject to judicial review.

Nor does *Nielsen v. Preap*, 586 U.S. 392 (2019), eliminate constitutional limitations on immigration detention. Courts continue to recognize that due process imposes independent constitutional restraints on prolonged civil detention.

E. The Due Process Clause Applies to Noncitizens Physically Present in the United States.

Respondents rely heavily on *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103 (2020), and *Mezei*. But neither case authorizes indefinite detention without constitutional review.

*Thuraissigiam* addressed the limited scope of judicial review over expedited removal determinations. It did not involve a prolonged detention challenge or hold that arriving noncitizens possess no constitutional protections whatsoever.

Indeed, the Supreme Court has long recognized that noncitizens physically present in the United States are protected by the Due Process Clause. See *Zadvydas*, 533 U.S. at 693 (“[T]he Due Process Clause applies to all ‘persons’ within the United States.”).

Similarly, the Ninth Circuit has recognized constitutional limitations on immigration detention. See *Nadarajah v. Gonzales*, 443 F.3d 1069, 1082–83 (9th Cir. 2006).

Although Respondents cite *Mezei*, that case involved exclusion at Ellis Island during extraordinary national security circumstances and has repeatedly been limited by subsequent Supreme Court precedent.

Moreover, *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022), did not hold that arriving noncitizens lack all due process rights regarding detention. Rather, *Rodriguez Diaz* recognized that constitutional analysis depends upon the particular liberty interest at stake and the procedures afforded.

Physical liberty remains among the most fundamental constitutional interests protected by the Fifth Amendment. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

#### F. Petitioner Is Entitled to an Individualized Bond Hearing Before an Immigration Judge.

At minimum, due process requires an individualized hearing at which the government bears the burden of proving continued detention is justified.

The Supreme Court’s balancing framework under *Mathews v. Eldridge*, 424 U.S. 319 (1976), supports such relief.

First, the private interest at stake—physical liberty—is extraordinarily significant.

Second, the risk of erroneous deprivation is substantial where detention occurs automatically without any individualized determination.

Third, the government’s administrative burden in providing a bond hearing is minimal because immigration courts already routinely conduct custody hearings.

The Ninth Circuit has repeatedly recognized that due process requires heightened procedural protections in immigration custody proceedings. See *Singh v. Holder*, 638 F.3d 1196, 1203–05 (9th Cir. 2011).

Petitioner therefore respectfully requests that this Court order Respondents to provide an individualized bond hearing before an immigration judge within seven days, at which the government bears the burden of proving by clear and convincing evidence that continued detention is necessary.

#### IV. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court:

1. Reject Respondents’ jurisdictional arguments;

2. Grant the Petition for Writ of Habeas Corpus;
3. Order Respondents to provide Petitioner with an individualized bond hearing before an immigration judge within seven days; or alternatively,
4. Order Petitioner released under appropriate conditions of supervision.

Respectfully submitted,

Dated: 5-28-26

*andy miri*  
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