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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JIAN YANG,

Petitioner,

v.

MARKWAYNE MULLIN, Secretary of
the Department of Homeland Security,
TODD BLANCHE, Acting Attorney
General, TODD M. LYONS, Acting
Director, Immigration and Customs
Enforcement, JESUS ROCHA, Acting
Field Office Director, San Diego Field
Office, CHRISTOPHER LAROSE,
Warden at Otay Mesa Detention Center,

Respondents.

Case No.: 26-cv-3398-BAS-JAC

**Amended Petition for a
Writ of Habeas Corpus**

¹ The Court referred this matter to Federal Defenders, ECF No. 2. Federal Defenders confirms appointment is appropriate and accepts appointment. Mr. Yang's financial eligibility for appointment is included in the declaration, Exhibit A, attached to this amended petition.

I. Introduction

Jian Yang fled political persecution in China after criticizing the government's COVID-19 policies. In retaliation, the Chinese government closed his restaurant business, seized his assets, and tainted his employment record, leaving him unable to find work or pay for his seventeen-year-old daughter's education. Mr. Yang arrived at the United States border on October 2, 2025, and requested asylum. He was detained that same day and has remained at the Otay Mesa Detention Center ever since—nearly nine months. On May 28, 2026, an immigration judge denied his asylum application and ordered him removed to China. Mr. Yang intends to appeal that decision to the Board of Immigration Appeals. *See* Exhibit A.

Mr. Yang's appeal is due June 29, 2026, and he intends to file it. Exhibit A. Once he appeals, no briefing schedule will issue for some time. A comprehensive analysis of BIA appeals shows that the median processing time has doubled in the last two years. It now takes, on average, over seven months for an appeal to resolve. About one in three cases now takes more than a year. *See* Exhibit B (declaration of Zabdi Salazar regarding statistics on BIA detained case appeals).

Because he asked for asylum at the border, Mr. Yang faces mandatory statutory detention for the duration of his appeal to the BIA and potentially the Ninth Circuit. Considering the factors outlined in *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1106 (W.D. Wash. 2019), this Court should conclude that his indefinite mandatory detention without an individualized determination violates due process and order that he receive a bond hearing or release.

“[A] period of nine months favor[s] the petitioners”: “the length of detention has surpassed the rough six-month threshold at which detentions become less and less reasonable.” *LBOM v. Hermosillo*, No. 25-cv-2695-GJL, 2026 WL 266068, *3 (W.D. Wash. Feb. 2, 2026) (quoting *Perez v. Decker*, No. 18-cv-5279-VEC, 2018 WL 3991497, *5 (S.D.N.Y. 2018)).

Many courts grant petitions for noncitizens appealing asylum cases who have been detained for even less time: “the appeal to the BIA may take months, and any appeal to the Ninth Circuit thereafter may take years.” *Beyene v. LaRose*, No. 26-cv-3037-JLS-DDL, 2026 WL 1708599, *2 (S.D. Cal. June 12, 2026) (seven months); *accord Nche v. Patrick*, No. 26-cv-2449-JES-DDL, 2026 WL 1195015, *3 (S.D. Cal. May 1, 2026) (six months); *Hasaballah v. LaRose*, No. 26-cv-1172-DMS-DDL, 2026 WL 936951, *1 (S.D. Cal. Apr. 7, 2026) (seven months); *Uferk v. Brightman*, No. 26-cv-2354-RBM-DDL, 2026 WL 1157166, *2 (S.D. Cal. Apr. 28, 2026) (seven months); *Derbew v. Larose*, No. 26-cv-2803-JAO-DEB, 2026 WL 1468308, *3 (S.D. Cal. May 22, 2026) (eight months); *Cong v. Noem*, No. 25-cv-3730-GPC-DEB, 2026 WL 76566, *5 (S.D. Cal. Jan. 8, 2026) (eight months); *Amado v. U.S. Dep’t of Justice*, No. 25-cv-2687-LL-DDL, 2025 WL 3079052, *6 (S.D. Cal. Nov. 4, 2025) (collecting cases at seven months and nine months); *see also Mtiulishvili v. Larose*, No. 26-cv-387-RSH-JLB, 2026 WL 377870, *3 (S.D. Cal. Feb. 10, 2026) (ten months); *Seged v. Larose*, No. 26-cv-2564-BTM-DEB, 2026 WL 1480801, *1 (S.D. Cal. May 27, 2026) (nine months).

II. Statement of Facts

Jian Yang is a citizen of China. Exhibit A ¶ 1. Before he fled, Mr. Yang owned and operated a restaurant business. *Id.* ¶ 4. After he publicly expressed disagreement with the Chinese government’s COVID-19 policies, the government retaliated: it closed his restaurant, seized his assets, and tainted his employment record. *Id.* As a result, Mr. Yang has been unable to obtain gainful employment or to pay tuition for his seventeen-year-old daughter’s education. *Id.*

Fearing continued persecution, Mr. Yang came to the United States border from China to seek asylum on October 2, 2025. *Id.* ¶ 1. He was detained that same day and taken to the Otay Mesa Detention Center, where he has remained ever since. *Id.* ¶¶ 1–2. Because he arrived at the border requesting asylum, Mr. Yang was subject to mandatory statutory detention, and he has never received a bond

1 hearing.

2 Mr. Yang has pursued his asylum case diligently from detention. Around
3 October 2025, he passed a credible fear interview and received a hearing date. *Id.*
4 ¶ 3. Over the following months, he appeared at approximately five or six hearings
5 before an immigration judge, each time represented by an immigration attorney
6 who appeared by video and provided free legal services. *Id.*

7 On May 28, 2026, an immigration judge denied Mr. Yang's asylum
8 application and ordered him removed to China. *Id.* ¶ 5. Mr. Yang intends to appeal
9 that decision; his notice of appeal is due June 29, 2026. *Id.* He remains detained at
10 the Otay Mesa Detention Center, where his health has deteriorated—he believes
11 that medication administered by jail staff has caused nerve damage to his hand. *Id.*
12 ¶¶ 2, 6. Because his appeal is not due until June 29, 2026, no briefing schedule has
13 yet issued at the BIA. *Id.*

14 A recent comprehensive analysis of the BIA's detained docket shows that
15 the median processing time for appeals filed in the first quarter of 2016 was 216
16 days, about seven months. *See* Exhibit B ¶ 3, 13. About one in three cases took
17 more than a year. *Id.* ¶ 18 (noting that in the first quarter, "72.4% of cases were
18 completed within one year, while 27.6% took more than one year"). One in ten
19 appeals took more than three and a half years. *Id.* ¶ 14 (noting that the "90th
20 percentile rose . . . to 1,264 days in Q1 2026, or about three and a half years").

21 **III. This Court has jurisdiction to consider due process claim of unlawful**
22 **prolonged detention.**

23 The government often argues that this Court's jurisdiction to consider
24 immigration habeas petitions under 8 U.S.C. § 2241 is taken away by 8 U.S.C.
25 § 1252(g). This argument is "mistaken." *Hernandez Cruz v. Noem*, No. 25-cv-
26 2566-SB-MAA, 2025 WL 3482630, *1 (C.D. Cal. Dec. 2, 2025).

27 Courts "should read § 1252(g) narrowly." *Ibarra-Perez v. United States*,
28 154 F.4th 989, 991 (9th Cir. 2025) (citing *Dep't of Homeland Sec. v. Regents of*

1 *the Univ. of Cal.*, 591 U.S. 1, 19 (2020)). That section’s jurisdiction-stripping
2 provisions are limited to “three discrete actions”: the “decision or action to
3 *commence* proceedings, *adjudicate* cases, or *execute* removal orders.” *Reno v.*
4 *Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (quoting 8
5 U.S.C. § 1252(g)). They do not strip jurisdiction and “sweep in any claim that can
6 technically be said to ‘arise from’ the three listed actions of the Attorney General.
7 Instead, [the Court] read[s] the language to refer to just those three specific
8 actions themselves.” *Jennings v. Rodriguez*, 538 U.S. 281, 294 (2018).

9 As a result, this Court still has jurisdiction over this case. Like many other
10 habeas petitioners in immigration detention, Mr. Yang is “seeking to review the
11 legality of [his] detention, arguing that the length of time [he] ha[s] been detained
12 here violates due process—rather than challenging the decision to commence
13 proceedings, the adjudication of [his] removal case, or an action to execute [his]
14 removal order.” *Gao v. LaRose*, 805 F. Supp. 3d 1106, 1109 (S.D. Cal. 2025)
15 (finding jurisdiction over § 2241 habeas petition in a prolonged detention case for
16 an arriving noncitizen and ordering an individualized bond hearing). This Court’s
17 jurisdiction is “not barred by Section 1252(g).” *Id.*

18 **IV. The Fifth Amendment’s Due Process Clause prohibits prolonged**
19 **immigration detention without a bond hearing.**

20 The Fifth Amendment’s Due Process Clause countermands the
21 government’s statutory authority to detain immigrants without bond hearings. Mr.
22 Yang has been and remains detained under 8 U.S.C. § 1225(b)(1)(B)(ii) for
23 “consideration of [his] application for asylum.”

24 “Section 1225 applies to ‘applicants for admission’—noncitizens who
25 ‘arrive[] in the United States,’ or are ‘present’ in the United States but have ‘not
26 been admitted.’” *Banda*, 385 F. Supp. 3d at 1111. It “applies to, among others,
27 noncitizens initially determined to be inadmissible because of . . . lack of valid
28 documentation.” *Id.* That includes persons who, like Mr. Yang here, arrive at the

border, apply for asylum, are denied asylum, and appeal that denial to the BIA.
See 8 U.S.C. § 1225(b)(1)(B)(ii).

In years past, the Ninth Circuit applied the constitutional avoidance canon to hold that § 1225(b) implicitly entitled detained immigrants to bond hearings every six months. *Rodriguez v. Robbins*, 804 F.3d 1060, 1087–89 (9th Cir. 2015). But the Supreme Court overruled that precedent in *Jennings v. Rodriguez*, holding that the statute does not entitle detainees to bond hearings or otherwise impose “any limit on the length of detention.” 583 U.S. 281, 297 (2018). *Jennings* did not address whether prolonged, mandatory detention without a bond hearing violates due process. *Id.* at 312. The Supreme Court’s later decision in *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020), also poses no barrier to granting relief on this detention-based due process claim. *Thuraissigiam* “circumscribe[ed] an arriving alien’s due process rights to *admission*, rather than limiting that person’s ability to challenge *detention*.” *Mtiulishivili*, 2026 WL 377870 at *2 (emphasis in original).

Now, “[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.” *Banda*, 385 F. Supp. 3d at 1116 (cleaned up) (collecting cases); *accord, e.g., Khedry-Kiyarsi v. Divver*, No. 26-cv-623-CAB-AHG, 2026 WL 657752 (S.D. Cal. Mar. 9, 2026). Indeed, the Ninth Circuit has “grave doubts that any statute that allows for arbitrary prolonged detention without any process is constitutional or that those who founded our democracy precisely to protect against the government’s arbitrary deprivation of liberty would have thought so.” *Rodriguez v. Marin*, 909 F.3d 252, 256–57 (9th Cir. 2018).

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V. Courts have reached different conclusions about when immigration detention becomes indefinitely prolonged, but Mr. Yang would prevail under any standard.

Some courts have “conclude[d] . . . that detention becomes prolonged after six months and entitles [a petitioner] to a bond hearing.” *Rodriguez v. Nielsen*, No. 18-CV-04187-TSH, 2019 WL 7491555, at *6 (N.D. Cal. Jan. 7, 2019). In that case, Mr. Yang would automatically qualify. He has been detained for nearly nine months.

Other courts have adopted various factors tests, which often include:

- (1) the total length of detention to date, which is the most important factor;
- (2) the likely duration of future detention;
- (3) the conditions of detention;
- (4) delays in removal proceedings caused by the detainee;
- (5) delays in removal proceedings caused by the government; and
- (6) the likelihood that the removal proceedings will result in a final order of removal.

Mtiulishvili, 2026 WL 377870 at *2 (citing *Kydryali v. Wolf*, 499 F. Supp. 3d 768, 773 (S.D. Cal. 2020), and *Banda*, 385 F. Supp. 3d at 1116).

Mr. Yang prevails upon balancing these factors: his nearly nine-month detention, plus an appeal likely to take at least another seven months, plus his conditions of confinement, plus his likelihood of prevailing on his asylum claim based on the persecution he suffered in China for criticizing the government’s COVID-19 policies, all warrant a bond hearing.

First, the “most important factor,” the length of detention, favors the petitioner or is at most neutral. *Banda*, 385 F. Supp. 3d at 1118. He has been detained since October 10, 2025. In assessing this factor, “[i]t is important to bear in mind the context: The detention that is being examined here is the detention of a human being who has never been found to pose a danger to the community or to

1 be likely to flee if released.” *Jamal A. v. Whitaker*, 358 F. Supp. 3d 853, 859 (D.
2 Minn. 2019). And, of course, many “[c]ourts have found that detention over seven
3 months without a bond hearing weighs toward a finding that it is unreasonable.”
4 *Amando*, 2025 WL 3079052 at *5 (collecting cases). Even courts that take a more
5 conservative approach hold that detention in a similar range, for “over 10
6 months,” “neither . . . prevent[s] constitutional scrutiny” nor “presumptively
7 establish[es] unreasonably prolonged detention.” *Mtiulishvili*, 2026 WL 377870 at
8 *3 (ordering a bond hearing in light of conditions of confinement at Otay Mesa, a
9 recently filed pending appeal, and the petitioner’s young age).

10 Second, Mr. Yang has reason to anticipate significant future detention. His
11 notice of appeal to the BIA is due June 29, 2026, and once filed no briefing
12 schedule will issue for some time. Exhibit A. In the most recent available quarter
13 of data, the median BIA appeal took over seven months; one in three took more
14 than a year; and one in ten took more than three and a half years. Exhibit B ¶¶ 3,
15 13, 14, 18. As in *Mtiulishvili*, “the likely duration of future detention also favors”
16 Mr. Yang, where his appeal is imminent and “no further dates appear to have been
17 set.” 2026 WL 377870 at *3. “[T]he appeal to the BIA may take months, and any
18 appeal to the Ninth Circuit thereafter may take years.” *Beyene*, 2026 WL 1708599
19 at *2.

20 Third, Mr. Yang’s confinement at the Otay Mesa Detention Center “is similar
21 to penal confinement.” *Ayideji v. Casey*, No. 26-cv-16244-CAB-MMP, 2026 WL
22 948669, *2 (S.D. Cal. Apr. 8, 2026). His “conditions of detention favor setting a
23 bond hearing,” as “[c]ourts in this district have found that conditions at the ODMC
24 are ‘indistinguishable from penal confinement,’ and that this factor weighs in favor
25 of petitioners’ due process arguments of prolonged detention.” *Mtiulishvili*, 2026
26 WL 377870 at *3 (quoting *Kydyrali*, 499 F. Supp. 3d at 773). Mr. Yang’s health
27 has deteriorated during his detention: he believes that medication administered by
28 jail staff has caused nerve damage to his hand. Exhibit A ¶ 6.

The fourth and fifth factors, regarding delay by the parties, either favor Mr. Yang or are neutral. Mr. Yang has diligently pursued his case—appearing with counsel at each of his five or six hearings before the immigration judge—and intends to appeal the denial of his asylum application by the deadline. Exhibit A ¶¶ 3, 5. None of the delay in his proceedings is attributable to him.

Sixth, there is a likelihood that Mr. Yang will prevail on his asylum claim. He fled China after the government persecuted him for criticizing its COVID-19 policies—closing his restaurant business, seizing his assets, and tainting his employment record so that he could no longer earn a living or support his daughter. See Exhibit A ¶ 4.

CLAIM AND PRAYER FOR RELIEF

For the reasons given, the Fifth Amendment Due Process Clause prohibits the government from continuing to detain Petitioner.

Accordingly, Petitioner respectfully requests that this Court:

1. **Order Respondents to immediately release Petitioner from custody.** “A district court has equitable discretion in determining the appropriate remedy ‘as law and justice require’ for unlawful detention in a habeas petition.” *Figueredo v. ICE*, No. 5:26-cv-360, 2026 WL 1552402, *3 n.3 (S.D. Tex. June 2, 2026) (quoting *Brown v. Davenport*, 596 U.S. 118, 127–28 (2022)). Some district courts have found recently “that the specific harm Petitioner[s] suffered—unlawful deprivation of liberty without due process—is remedied by granting [them] immediate release, rather than ordering a bond hearing.” *Id.* “[A] hearing after Petitioner[s]’ unjustified deprivation of liberty does not cure the deprivation.” *Id.*
2. **In the alternative, order a prompt bond hearing.** Specifically, the Court should order:
 - a. Respondent provide Petitioner with a hearing and

individualized bond determinations within **fourteen days** of its order.

- i. At that hearing, the government shall bear the burden of establishing by clear and convincing evidence that Petitioner poses a danger or flight risk.
- ii. The IJ shall consider alternative conditions of release and Petitioner's ability to pay bond if he or she determines bond is appropriate.
- iii. Respondent shall make a complete record of the bond hearing available to Petitioner and counsel upon request.

3. Order all other relief that the Court deems just and proper.

Respectfully submitted,

Dated: June 25, 2026

s/ Payam Fakharara

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