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8
9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 (The Honorable Ruth Bermudez Montenegro, U.S. District Judge
12 (The Honorable Allison H. Goddard, U.S. Magistrate Judge)

13 NICOLAY NAZAROV,
14 Petitioner,

15 v.

16 WARDEN, OTAY MESA DETENTION
17 CENTER,
18 Respondent.

Case No.: 26-cv-03401-RBM-AHG

TRAVERSE IN SUPPORT OF
PETITION FOR WRIT OF
HABEAS CORPUS [28 U.S.C.
§ 2241]

19 INTRODUCTION

20 In his amended habeas petition, Mr. Nazarov, a citizen of Russia, explained
21 that on September 23, 2025, he presented himself to customs officials at the San
22 Ysidro Port of Entry (SYPOE) and requested asylum, and that either that day or the
23 next,¹ he was taken to the Otay Mesa Detention Center (CCA), where he has since
24 been detained *without a bond hearing* pending the finality of his asylum proceedings.

25
26 ¹ According to immigration records, including pages 19, and 24, of Form I-870, attached to
27 respondent's return as "Exhibit A," Mr. Nazarov arrived at the SYPOE and applied for asylum on
28 September 23, 2025, and was "apprehen[ded]," "detained" and taken to CCA on September 24,
2025. This traverse considers the date of September 24, 2025, as the first day of Mr. Nazarov's
detention; thus, as of today, he has been in continuous ICE custody for 10 months, and 4 days.

1 See Doc. 12 at 1-2, 6-8. Since he had been in immigration custody for close to
2 10 months, he requested that the Court order respondent to provide him with a bond
3 hearing forthwith. See id. at 9.

4 In its return, respondent argues that Mr. Nazarov is not entitled to the relief he
5 has requested, because his removal proceedings are not final, he remains lawfully
6 “mandatorily detained,” regardless of whether such detention has been prolonged.
7 See Doc. 15 at 2, 4-7. Respondent also argues that Mr. Nazarov’s 10-month long
8 detention at CCA, is not unconstitutionally prolonged, particularly since his detention
9 has not continued beyond a year, and is thus, not long enough a time period for this
10 Court to be concerned about Mr. Nazarov’s due process rights. Id. at 7-8.

11 This Court should reject the government’s argument that Mr. Nazarov has no
12 due process right in his own liberty, as have “[m]ost courts.” See Gao v. LaRose, 805
13 F.Supp.3d 1106, 1110 (S.D. Cal. 2025). It should also reject respondent’s argument
14 that Mr. Nazarov’s detention has not been unconstitutionally prolonged, in violation
15 of due process under the Fifth Amendment.²

16 In this traverse, Mr. Nazarov maintains that the 10 months he has spent in
17 immigration custody at CCA, a facility operated as a penal institution for both
18 criminal and civil detainees,³ has, at this point, become unconstitutionally prolonged.
19 See e.g., Benitez v. Larose, No. 26-cv-2389-JLS (MMP), 2026 WL 1257757, at *2
20 (S.D. Cal. May 7, 2026) (Benitez) (agreeing that “[n]early all district courts t[o] have
21 considered the . . . [issue] agree that prolonged mandatory detention pending removal
22 proceedings, without a bond hearing, will—at some point—violate the right to due
23

24 ² Respondent also claims that Mr. Nazarov’s claim is barred for lack of jurisdiction under 8
25 U.S.C. § 1252(g). Doc. 15 at 4-6. But 8 U.S.C. § 1252(g) does not prohibit challenges to detention
26 “merely because they are in some fashion connected to removal orders.” Ibarra-Perez v. United
States, 154 F.4th 989, 997 (9th Cir. 2025).

27 ³ See Immigration Detention In California, *A Review of Conditions of Confinement*, California
28 Department of Justice (May 2026) (rev. June 2026), at 117-18. (Italics added) (CCA has contracts
with the U.S. Marshal’s Service and ICE and detains federal criminal defendants and ICE detainees
contemporaneously, although the two groups are not housed together in general population).

1 process.”) (Citing Singh v. Barr, 400 F.Supp.3d 1005 (S.D. Cal. 2019)). Again here,
2 Mr. Nazarov respectfully requests that this Court either order his immediate release,
3 or alternatively, order respondent to provide him with a bond hearing forthwith.

4
5 **ARGUMENT**

6 **MR. NAZAROV DOES HAVE A DUE PROCESS RIGHT TO AN**
7 **INDIVIDUALIZED CUSTODY DETERMINATION BECAUSE HIS**
8 **DETENTION HAS BECOME UNCONSTITUTIONALLY**
9 **PROLONGED, IN VIOLATION OF HIS FIFTH AMENDMENT**
10 **RIGHT TO DUE PROCESS**

11 In his amended habeas petition, Mr. Nazarov contended that he had a due
12 process right to an individualized custody determination at this point, because his
13 detention of *nearly 10 months*⁴ had become unconstitutionally prolonged. Doc. 12 at 4-
14 8. Respondent argues that Mr. Nazarov has no due process right to release from
15 custody *at any time* since he is in removal proceedings and is thus properly
16 “mandatorily detained” under 8 U.S.C. § 1225(b)(1)(B)(ii). If the Court *does* concern
17 itself with Mr. Nazarov’s due process rights, respondent then argues that
18 Mr. Nazarov is not entitled to habeas relief since the time he has spent in detention
19 has not been prolonged. See Doc. 15 at 4-7. Respondent’s arguments are
20 fundamentally flawed. That is so, because almost every district court confronted with
21 the issue presented here, agree that there comes a point in time when prolonged
22 mandatory detention during an ICE detainee’s removal proceedings will result in a
23 violation of his or her due process under the Fifth Amendment. See Benitez, 2026

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25
26 ⁴ On page 7 of the amended petition, it incorrectly states that Mr. Nazarov’s time in custody
27 “[wa]s nearing the eleven-month mark[.]” See Doc. 12. That statement was based on a
28 mathematical miscalculation by undersigned counsel when she did not have access to the
immigration records respondent attached to its return as Exhibit A. See Doc. 15-1. Undersigned
counsel corrects the mathematical mistake in this traverse. *As of today*, Mr. Nazarov has spent
10 months, and 4 days, in actual immigration detention without a bond hearing.

1 WL 1257757, at *2 (citation omitted).

2 **A. The Cases Cited by Respondent Do Not Advance Its Argument that**
3 **Mr. Nazarov Is Properly Mandatorily Detained Under 8 U.S.C.**
4 **§ 1225(b)(1)(B)(ii)**

5 Respondent's mandatory detention argument incorrectly relies upon two cases
6 that do not support its argument and instead simply articulate the "entry fiction
7 doctrine" regarding Congress's "plenary authority to decide which [noncitizens] to
8 admit" into the country. See Department of Homeland Security v. Thuraissigiam,
9 591 U.S. 103, 139 (2020); Shaughnessy v. United States ex rel. Mezei, 345 U.S. 206
10 (1953).

11 Neither the "entry fiction doctrine" nor the cases upon which respondent
12 relies in support of its mandatory detention argument address the due process
13 constraints on prolonged detention. "Mezei [is distinguishable because it] involved a
14 noncitizen who was permanently excluded from the United States on security
15 grounds, not a detainee, [like Mr. Nazarov], raising [his] due process rights in the
16 context of detention without a bond hearing." Amado v. U.S. Dept. of Justice, 2025
17 WL 3079052, *5 (S.D. Cal. Nov. 4, 2025) (collecting cases). And "Thuraissigiam
18 addressed a noncitizen's right to challenge admission, not detention." Id. (collecting
19 cases). Notably, "[a]t least five circuit courts have all since considered due process
20 challenges to unreasonably prolonged mandatory detention under [another
21 immigration statute,] § 1226, and, tellingly, none of them referenced Thuraissigiam in
22 their majority opinions." Lopez-Arevelo v. Ripa, 801 F. Supp. 3d 668, 683 (W.D.
23 Tex. 2025). As it stands, "the entry fiction doctrine does not [override] the
24 constitutional issues raised here." Kydyrali v. Wolf, 499 F. Supp. 3d 768, 771 (S.D.
25 Cal. 2020).

26 Furthermore, in Mezei, "[t]he . . . Court explicitly grounded its decision on the
27 special circumstances of a national emergency and the determination by the Attorney
28 General that Mezei presented a threat to national security." Rosales-Garcia v.

1 Holland, 322 F.3d 386, 413–14 (6th Cir. 2003). Here, in contrast, the government
2 has *never* identified a specific reason as to why Mr. Nazarov poses a flight risk, or a
3 danger to the community, if he were to be released on bond. He has not received an
4 individual evaluation of these risks, as did Mezei, after spending more than
5 10 months in detention. Sadly, without this Court’s intervention, that individual
6 evaluation is unlikely to occur anytime soon. See Exhibit B, “Declaration of Heather
7 L. Beugen,” at 3 (prior immigration counsel, who helped prepare and timely file
8 Mr. Nazarov’s notice of appeal to BIA on May 19, 2026, confirmed via email that a
9 briefing schedule has still not been set by the BIA).

10 Accordingly, Mr. Nazarov requests this Court to reject respondent’s
11 “mandatory detention” argument and find that the 10 months, and 4 days he has
12 been in immigration detention is long enough a time period to trigger due process
13 concerns.

14 **B. The Banda⁵ Factors Weigh In Favor of Granting Relief to Mr. Nazarov**

15 Respondent invites the Court to deny Mr. Nazarov’s petition because at least
16 three of the six Banda factors weigh in its favor, and the remaining three are neutral.
17 Respondent is incorrect. The Court should decline the invitation, because *at least*
18 three of the six factors weigh in Mr. Nazarov’s favor.

19 Respondent first claims that Mr. Nazarov’s “10-month [long] detention falls
20 short of the length [of time] courts have found to raise due process concerns. [As
21 such, respondent boldly opines that “[t]h[is] [Court’s] [due process] inquiry should
22 end there.” Doc. 15 at 7. This claim is not completely accurate, nor is it persuasive.
23 Multiple courts have held that detention of a similar length of time in this
24 case—10 months, 4 days as of today—has become “prolonged.” See Brissett v.
25 Decker, 324 F. Supp. 3d 444, 452 (S.D.N.Y. 2018); Perez v. Decker, No. 18-CV-5279
26 (VEC), 2018 WL 3991497, at *5 (S.D.N.Y. Aug. 20, 2018); Masood v. Barr, No. 19-
27

28 ⁵ Banda v. McAleen, 385 F.Supp.3d 1099 (W.D. Wash. 2019).

1 CV-07623-JD, 2020 WL 95633, at *2 (N.D. Cal. Jan. 8, 2020). “[C]ourts have [even]
2 found detention *over seven months* without a bond hearing to weigh toward a finding
3 that [the length of detention] is unreasonable.” Amado v. United States Dep’t of
4 Just., 25cv2687-LL (DDL), 2025 WL 3079052, at *5 (S.D. Cal. 2025) (italics added).
5 So, while it is not the only factor the Court has to consider,⁶ the length of
6 Mr. Nazarov’s detention to date, weighs in his, not respondent’s, favor.

7 Second, Mr. Nazarov has every reason to anticipate being detained for a
8 significant time in the future. While an immigration judge has issued a final removal
9 order in Mr. Nazarov’s case, see Doc. 15 at 8, more than two months ago, on May 19,
10 2026, he filed a timely notice of appeal to the BIA. See Exhibit A, “Notice of Appeal
11 to the BIA,” at 2, 7. The BIA has not set a briefing schedule yet, let alone oral
12 argument, both of were requested in the notice of appeal. Ex. A, at 2, 7. Since
13 Mr. Nazarov is still waiting to obtain a briefing schedule from the BIA, let alone a
14 hearing, respondent’s citation to Kydyrali, 499 F.Supp.3d at 770-71, actually seems to
15 be more helpful to Mr. Nazarov’s contention, then it is to respondent’s argument.
16 See Doc. 15 at 8.

17 Even assuming the best case scenario for respondent, i.e., that the BIA sets a
18 briefing schedule before the end of this month, it will be at least 60 days before the
19 DHS files a responsive brief. At that point, which seems all but certain now,
20 Mr. Nazarov will have surpassed the 12-month detention mark, which is the time
21 period respondent *agrees* is when courts start to become greatly concerned with the
22 continued detention of an arriving alien in asylum proceedings. See Doc. 15 at 7
23 (citations omitted).

24
25 ⁶ In support of its claim that the 10-month long detention of Mr. Nazarov falls short of
26 triggering any due process concerns, respondent cites Sadeqi v. LaRose, No. 25cv2587-RSH-BJW,
27 2025 WL 3154520, at *3 (S.D. Cal. 2025), in which the district court held that the length of
28 detention, *by itself*, does not justify granting habeas relief to an arriving alien in removal proceedings.
Mr. Nazarov does not argue that the length of his detention, by itself, entitles him to immediate
release or a bond hearing. To the contrary, Mr. Nazarov understands, and has acknowledged, that
the length of his detention is one of several factors this Court must consider. See e.g., Doc. 12 at 8.

1 Since Mr. Nazarov is at the very beginning of the appellate proceedings; first in
2 the BIA, and then in the Ninth Circuit, if he is not successful in the BIA. All told,
3 “[t]h[e] [appellate] process may take up to two years or longer.” Banda, 385 F. Supp.
4 3d at 1119. Because “Petitioner’s future detention can last several more months or
5 even years[,]” this factor favors Mr. Nazarov. Abdul Kadir v. Larose, No.
6 25CV1045-LL-MMP, 2025 WL 2932654, at *5 (S.D. Cal. Oct. 15, 2025).

7 An examination of a recent opinion out of this District may be helpful on the
8 future detention factor. In that case, the district court granted relief in a prolonged
9 detention case where the individual was on appeal at the BIA. See Fernandez v.
10 Warden, 25-cv-3813-JLS (MSB) (S.D. Cal. Jan. 26, 2026). The district court in
11 Fernandez explained:

12 As to the likely duration of future detention, Petitioner
13 argues that he “has reason to anticipate significant future
14 detention during his appellate process” since a “BIA appeal
15 itself can take months, and afterward, a petitioner may
16 appeal to the Ninth Circuit.” Pet. at 7 (citing Banda v.
17 McAleenan, 385 F. Supp. 3d 1099, 1119 (W.D. Wash.
18 2019)). The Court agrees, since Respondents “cannot
19 predict with any degree of confidence when the BIA
20 appeal will be resolved.” Masood v. Barr, No.
21 19-CV-07623-JD, 2020 WL 95633, at *3 (N.D. Cal. Jan. 8,
22 2020) . . . Respondents fail to address Petitioner’s
23 pending appeal. See Ret. Therefore, the likely duration of
24 future detention weighs in Petitioner’s favor.

19 Id. at *4-5. Here, as the Petitioner in Masood, Mr. Nazarov’s case is on appeal to the
20 BIA. See Ex. A at 1-7; Ex. B at 3. Not only that, but as explained *ante*,
21 Mr. Nazarov’s case is in the very beginning stages of the appellate process in the BIA.

22 Furthermore, as Mr. Nazarov testified during his credible fear interview on
23 October 3, 2025, testimony deemed “credible” by the interviewing officer, see
24 Doc. 15-1 at 37, if he is sent back to Russia, he will be imprisoned, harmed or killed
25 because Russia views his opposite political view and enlistment in the French Brigade
26 in 2019, to be treasonous. See Doc. 15-1 at 31, 33, 35. In other words, there is no
27 way Mr. Nazarov will ever willingly return to Russia. It is a foregone conclusion then,
28 that he will not be returned to Russia without having first exhausted all of his

1 appellate rights, including appealing to the Ninth Circuit, should such an appeal be
2 necessary, and requesting that the United States Supreme Court agree to hear his case.
3 As such, Mr. Nazarov's detention is-and will continue to be-prolonged. This favor
4 thus weighs in his favor.

5 Third, the conditions of confinement at CCA weigh in Mr. Nazarov's
6 favor—not that of respondent. As seen in the two photographs of the back of CCA
7 in Exhibit C, as undersigned counsel described in the amended petition, the facility in
8 which Mr. Nazarov has been detained since September 24, 2025, is surrounded by
9 tall, metal, barb-wired fences and locked doors. See Doc. 12 at 7-8. To an onlooker
10 standing in the parking lot of CCA, the facility's outside appearance supports
11 Mr. Nazarov's contention that he is being detained in a "penal" institution, rather
12 than the "civil" detention facility described by respondent. See Doc. 15 at 9.
13 Accordingly, "[Mr. Nazarov]'s confinement at [the Otay Mesa Detention Center] is
14 'indistinguishable from penal confinement.'" See Abdul Kadir, 2025 WL 2932654, at
15 *5 (quoting Kydyrali, 499 F. Supp. 3d at 773).

16 Not only is CCA operated as a penal institution for criminal, and ICE,
17 detainees, the living conditions inside the facility, are incongruent with the humane,
18 dignified treatment of persons. See e.g., "Cruel, Inhumane, and Unacceptable":
19 Attorney General Bonta Releases Fifth Report on Conditions at Immigration
20 Detention Facilities in California, Press Release (May 15, 2026), at
21 [https://oag.ca.gov/news/press-releases/cruel-inhumane-adn-unacceptable:-](https://oag.ca.gov/news/press-releases/cruel-inhumane-adn-unacceptable:-attorney-general-bonta-releases-fifth-report)
22 [attorney-general-bonta-releases-fifth-report](https://oag.ca.gov/news/press-releases/cruel-inhumane-adn-unacceptable:-attorney-general-bonta-releases-fifth-report), *last visited* on July 14, 2026. The
23 consistent overcrowding of the facility alone has led to unkempt living quarters, non-
24 usable bathroom facilities, insufficient food portions, bad tasting/smelling sink water
25 for drinking, and a lack of basic living necessities such as toilet paper and beds. See
26 Exhibit D, "Portions of May 2026 California DOJ Report re: Immigration Facilities
27 in CA," at 1-13.

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1 Simply put, respondent does not, and cannot, show that CCA, a facility that
2 confines federal criminal inmates contemporaneously with immigration detainees, see
3 Ex. D at 2-3, although not together in general population, is operated as anything
4 other than a penal institution. This factor thus also weighs in Mr. Nazarov's favor,
5 and not that of respondent.

6 The fourth and fifth Banda factors regarding delays in the proceedings, are not
7 necessarily as "neutral" as described by respondent. See Doc. 15 at 9. It is true that
8 neither Mr. Nazarov nor the government has done anything to unnecessarily delay
9 Mr. Nazarov's immigration proceedings. See id. However, while Mr. Nazarov filed a
10 timely notice of appeal of his final removal order to the BIA on May 19, 2026, still
11 today, more than two months later, the BIA has yet to set a briefing schedule in the
12 case. See Ex. A at 2, 7; Ex. B at 3. So, while the fourth and fifth factors can
13 reasonably be described as neutral, as does respondent, they can also reasonably be
14 described as tipping the balance *slightly in favor* of Mr. Nazarov.

15 Sixth, regarding the likelihood that the removal proceedings will result in a
16 final order of removal, respondent is correct—undersigned counsel cannot predict
17 the outcome of the BIA proceedings, or the outcome of an appeal to the Ninth
18 Circuit, or even, the likelihood that the United States Supreme Court will agree to
19 hear the case. However, if the claims raised in Mr. Nazarov's notice of appeal to the
20 BIA are supported by the oral proceedings of the hearing from which he appeals, it
21 seems reasonably probable that the BIA will reverse the immigration judge's final
22 order of removal in this case. See Ex. A at 4-7. This factor is likely neutral since no
23 one can predict what an appellate court will do in the future. But, at the very least, a
24 reasonable person cannot conclude the possible claims noticed in the notice of appeal
25 are frivolous or lacking in merit.

26 Accordingly, at least three of the Banda factors weigh in favor of finding that
27 Mr. Nazarov is entitled to a bond hearing forthwith. He respectfully requests this
28 Court to join most other district courts and find that at this point, his detention

1 without a bond hearing is, and will continue to be, a prolonged detention, in violation
2 of the Fifth Amendment's due process clause.

3 **CONCLUSION**

4 In closing, the Court should grant the petition now, rather than 60 days from
5 now, when Mr. Nazarov will undoubtedly have been in immigration custody for more
6 than a year. This is not a situation where Mr. Nazarov has been detained without a
7 bond hearing for only a couple of months. See Benitez, 2026 WL 1257757, at *1-2
8 (two months of immigration detention did not require ordering a bond hearing yet).
9 To the contrary, this is a case involving an arriving asylum seeker who has spent the
10 last 10 months, and 4 days in immigration custody without a bond hearing, and
11 whose asylum case is unlikely to be final for a very long time in the future.

12 For the foregoing reasons, and the reasons stated in the amended petition,
13 Mr. Nazarov respectfully requests the Court to either release him outright, or require
14 respondent to afford him a bond hearing forthwith.

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16 Dated: July 27, 2026

Respectfully submitted,

17
18 /s/Heather L. Beugen
19 Heather L. Beugen
20 Attorney for Petitioner Nazarov
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