

1 **ALANA L. MCMAINS**
California State Bar No. 285942
2 **LAW OFFICE OF ALANA MCMAINS**
185 W. F St. #100-R
3 San Diego, California 92101
Telephone: (619) 310-5421
4 alana@mcmainslaw.com

5 Attorney for Petitioner
6
7

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 **BRILIAN NCHUPOH NOPUOWOH,**

Case No.: 26-cv-3614-TWR-MMP

11 Petitioner,

12 v.

13 **CHRISTOPHER LAROSE,** Senior
Warden at Otay Mesa Detention Center,
14 et al.

15 Respondents.
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**TRAVERSE IN SUPPORT OF
PETITION
FOR A
WRIT OF HABEAS CORPUS**

1 INTRODUCTION

2 In his habeas petition, Brilian Nchupoh Nopuowoh explained that he is a
3 citizen of Cameroon who has been detained without a bond hearing for nine
4 months. However, the government maintains that Nopuowoh remains subject to
5 mandatory detention regardless of whether that detention has become prolonged.
6 This Court should reject the government's disturbing argument that he has no due
7 process interest in his own liberty, as "[m]ost courts" have. *Gao v. LaRose*, 805 F.
8 Supp. 3d 1106, 1110 (S.D. Cal. 2025) (Huie, J.). It should also reject
9 Respondents' argument that Nopuowoh's detention is not unconstitutionally
10 prolonged.

11 ARGUMENT

12 I. 8 U.S.C. § 1252(g) does not bar consideration of constitutional claims.

13 Respondent argues that this Court's jurisdiction to consider immigration
14 habeas petitions under 8 U.S.C. § 2241 is taken away by 8 U.S.C. § 1252(g). This
15 argument is "mistaken." *Hernandez Cruz v. Noem*, No. 25-cv-2566-SB-MAA,
16 2025 WL 3482630, *1 (C.D. Cal. Dec. 2, 2025).

17 As the Supreme Court and the Ninth Circuit have both recently clarified,
18 courts "should read § 1252(g) narrowly." *Ibarra-Perez v. United States*, 154 F.4th
19 989, 991 (9th Cir. 2025) (citing *Dep't of Homeland Sec. v. Regents of the Univ. of*
20 *Cal.*, 591 U.S. 1, 19 (2020)). That section's jurisdiction-stripping provisions are
21 limited to "three discrete actions": the "decision or action to *commence*
22 *proceedings, adjudicate cases, or execute removal orders.*" *Reno v. Am.-Arab*
23 *Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (quoting 8 U.S.C.
24 § 1252(g)). They do not strip jurisdiction and "sweep in any claim that can
25 technically be said to 'arise from' the three listed actions of the Attorney General.
26 Instead, [the Court] read[s] the language to refer to just those three specific
27 actions themselves." *Jennings v. Rodriguez*, 538 U.S. 281, 294 (2018).

28 As a result, this Court still has jurisdiction over Nopuowoh's claim. Like

1 many other habeas petitioners in immigration detention, Nopuowoh “is seeking to
2 review the legality of his detention, arguing that the length of time he has been
3 detained here violates due process—rather than challenging the decision to
4 commence proceedings, the adjudication of his removal case, or an action to
5 execute his removal order.” *Gao*, 805 F. Supp. 3d at 1109 (finding jurisdiction
6 over § 2241 habeas petition in a prolonged detention case for an arriving
7 noncitizen and ordering an individualized bond hearing). This Court’s jurisdiction
8 is “not barred by Section 1252(g).” *Id.*; *accord, e.g., Khorsheed v. LaRose*, No.
9 25-cv-3346-BTM-KSC, 2025 WL 3638141, *1 (S.D. Cal. Dec. 15, 2025) (same).

10 **II. Nopuowoh is not subject to mandatory detention without due process.**

11 In his amended petition, Nopuowoh argued that he had a due process right to
12 an individualized custody determination because his detention has become
13 prolonged. In response, the government claims that Nopuowoh has no due process
14 right to release from custody at any time. ECF No. 13 at 5–7.

15 Respondent incorrectly asserts that Supreme Court precedent bars
16 Nopuowoh’s request for relief. It cites to the portion of *Jennings v. Rodriguez* that
17 holds that detainees held under § 1225(b) are not entitled to bond hearings or any
18 “limit on the length of detention” *pursuant to the statute itself*. 583 U.S. 281, 297
19 (2018). But *Jennings* does not hold that noncitizens have zero right to a bond
20 hearing under *the United States Constitution*. Instead, the *Jennings* Court
21 specifically decided to “not reach those [constitutional] arguments.” *Id.* at 312.

22 In fact, Supreme Court precedent, as well as decisions from the Southern
23 District of California and district courts throughout the country, shows that the Due
24 Process Clause forbids the government from indefinitely detaining immigrants
25 under § 1225(b). The Supreme Court has directly opposed Respondent’s
26 proposition in *Zadvydas v. Davis*, stating that a “statute permitting indefinite
27 detention of an alien would raise a serious constitutional problem,” as the Fifth
28 Amendment forbids the government from depriving any person of liberty without

1 due process of law. 533 U.S. 678 (2001). Respondent fails to cite a single case
2 within the Ninth Circuit that supports its argument that arriving noncitizens have
3 no due process rights when it comes to prolonged imprisonment under § 1225(b).¹

4 Respondent fails to directly address most of the cases cited by Nopuowoh in
5 his brief, including the published Southern District of California opinion in
6 *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020) (Battaglia, J.).² It cites
7 to only one case from the Southern District to support its position, while Nopuowoh
8 cites to six (including *Kydyrali*). See *Mardian v. Mayorkas*, No. 25-cv-3467-JLS,
9 2026 WL 92064, at *2 (S.D. Cal. Jan. 13, 2026); *Cong v. Noem*, No. 25-cv-3730-
10 GPC-DEB, 2026 WL 76566, at *3 (S.D. Cal. Jan. 9, 2026); *Raeva v. Mayorkas*,
11 No. 25-cv-3175-JO, ECF No. 17 (S.D. Cal. Nov. 24, 2025); *Abdul Kadir v. Larose*,
12 No. 25-cv-1045-LL-MMP, 2025 WL 2932654, at *4 (S.D. Cal. Oct. 15, 2025); *Gao*
13 *v. LaRose*, No. 25-cv-2084-RSH-SBC, 2025 WL 2770633, at *3 (S.D. Cal. Sept.
14 26, 2025).

15 Respondent relies heavily on two cases that do not stand for the proposition
16 that mandatory detention of noncitizens pursuant to § 1225(b) is not subject to
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18 ¹ Further, it is incorrect that the government has no discretion under the law to
19 provide a bond hearing to Nopuowoh. Several courts have held that even if a
20 noncitizen is eligible to be placed in expedited removal, the government can instead
21 place him in regular removal proceedings and detain him under § 1226(a), which is
22 discretionary rather than mandatory detention. *Flores v. Barr*, 934 F.3d 910, 916–
23 17 (9th Cir. 2019) (“The government has discretion to place noncitizens in standard
24 removal proceedings even if the expedited removal statute could be applied to them
25 . . . [which would avoid] any mandatory detention allegedly required for expedited
26 removal.”); *Al-Sadeai v. ICE*, 540 F. Supp. 3d 983, 986 (S.D. Cal. 2021) (noting
27 that ICE “determined that Plaintiff would be detained pursuant to § 1226(a)” after
28 he was placed in expedited removal, given a positive credible fear determination,
and transferred to removal proceedings); *Singh v. Barr*, 400 F. Supp. 3d 1005, 1009
(S.D. Cal. 2019) (involving noncitizen processed for expedited removal, but
detained under § 1226(a) and given a bond hearing). But regardless of the
government’s ability to detain Nopuowoh pursuant to either § 1226(a) or (b), his
prolonged mandatory detention remains unreasonable, and he should be given a
bond hearing.

² The government cites to *Kydyrali* only to support its argument that Nopuowoh’s
detention is not prolonged. (ECF No. 13 at 9). It ignores the holding completely
when addressing the issue of whether Nopuowoh has a due process right to an
individualized custody determination.

1 constitutional limits of due process. (ECF No. 13, at 8–9 (citing *Department of*
2 *Homeland Security v. Thuraissigiam*, 591 U.S. 103, 138–40 (2020);
3 *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 207–09 (1953)). These
4 cases instead articulate the entry fiction doctrine regarding Congress’s “plenary
5 authority to decide which [noncitizens] to admit” into the country. *See*
6 *Thuraissigiam*, 591 U.S. at 130. Neither the doctrine nor the cases address the due
7 process constraints on detention.

8 *Thuraissigiam* did not involve a challenge to prolonged detention and is thus
9 inapposite here. Instead, the habeas petitioner in that case sought judicial review of
10 his credible fear proceedings. The Court held that an arriving noncitizen “has only
11 those rights regarding admission that Congress has provided by statute,” but it said
12 nothing about a noncitizen’s right to a bond hearing. 591 U.S. at 140. “At least five
13 circuit courts have all since considered due process challenges to unreasonably
14 prolonged mandatory detention under [another immigration statute], and, tellingly,
15 none of them referenced *Thuraissigiam* in their majority opinions.” *Lopez-Arevelo*
16 *v. Ripa*, 801 F. Supp. 3d 668, 683 (W.D. Tex. 2025). As it stands, “the entry fiction
17 doctrine does not trump the constitutional issues raised here.” *Kydyrali*, 499 F.
18 Supp. 3d at 771.

19 And *Mezei*, a case from over 70 years ago, involves an entirely different
20 statutory scheme than what currently exists. Further, the noncitizen in that case was
21 in an entirely different posture than Nopuowoh: he was excluded from the United
22 States before entry, he had a final order of removal, and he was deemed a danger to
23 national security. 345 U.S. at 213–16. “The *Mezei* Court explicitly grounded its
24 decision in the special circumstances of a national emergency and the determination
25 by the Attorney General that *Mezei* presented a threat to national security.”
26 *Rosales-Garcia v. Holland*, 322 F.3d 386, 413–14 (6th Cir. 2003). Here, the
27 problem is that the government has *never* identified a specific reason why
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1 Nopuowoh is a flight risk or a danger. The problem is that he has received no
2 individual evaluation at all.

3 **III. Nopuowoh has established that his continued mandatory detention has**
4 **become unreasonable.**

5 Respondent mistakenly contends that nine months of bondless custody is
6 insufficiently prolonged to warrant relief. While Respondent points to decisions
7 finding due process violations after more than a year of confinement, this argument
8 rests on a flawed premise: showing that year-long detention is unconstitutional does
9 not imply that nine months without process passes constitutional muster. None of
10 Respondent's authorities establish a nine-month threshold as permissible; rather,
11 they uniformly affirm that unreasonably prolonged custody offends due process.

12 “Courts have found detention over seven months without a bond hearing
13 weighs toward a finding that it is unreasonable.” *Amado v. United States Dep't of*
14 *Just.*, No. 25-cv-2687-LL-DDL, 2025 WL 3079052, at *5 (S.D. Cal. Nov. 4, 2025);
15 *see also Rodriguez v. Nielsen*, No. 18-cv-04187-TSH, 2019 WL 7491555, at *6
16 (N.D. Cal. Jan. 7, 2019) (noting that many courts have required bond hearings for
17 all cases in which a noncitizen is held for six months or longer). Respondent fails
18 to address the cases presented by Nopuowoh in which courts found prolonged
19 detention where noncitizens had been detained less than a year—and even less than
20 nine months. *See, e.g., Alizadeh v. Mullin*, No. 26-CV-2924 JLS (MMP), 2026 WL
21 1625651, at *2 (S.D. Cal. June 5, 2026) (finding prolonged detention at **over 6**
22 **months**); *Nche v. Patrick*, No. 26-CV-2449-JES-DDL, 2026 WL 1195015, at *3
23 (S.D. Cal. May 1, 2026) (**7 months**); *Islamov v. Doe*, No. 26-CV-01528-JES-VET,
24 2026 WL 1179873, at *4 (S.D. Cal. Apr. 30, 2026) (“**just over 6 months**”);
25 *Hasaballah v. LaRose*, No. 26-cv-1172-DMS-DDL, ECF No. 8 (S.D. Cal. Apr. 7,
26 2026) (**7 months**).

27 Respondent cites to *Sadeqi v. LaRose*, No. 25-cv-2587-RSH-BJW, 2025 WL
28 3154520, at *3 (S.D. Cal. Nov. 12, 2025), but a closer look at the language in that

1 case demonstrates that it does not create any type of rule about a minimum detention
2 length. Rather, the district court there stated only that “the length of Petitioner’s
3 detention to date—almost 12 months—*does not by itself, without more, establish*
4 *prolonged detention* in violation of due process.” *Id.* (emphasis added).

5 Here, Nopuowoh does not rely *solely* on the length of his detention. Rather,
6 he established that *Banda* factors (and other similar balancing tests for due process)
7 weigh in favor of his immediate release. *See Banda v. McAleenan*, 385 F. Supp. 3d
8 1099, 1111 (W.D. Wash. 2019). He has also shown that he will likely face lengthy
9 indeterminate detention and has created no undue delays in his own removal
10 proceedings. He has further demonstrated that he faces conditions of confinement
11 that are “indistinguishable from penal confinement,” *Kydyrali*, 499 F. Supp. 3d at
12 773, despite his lack of criminal history and his *prima facie* claim for political
13 asylum.

14 The government’s attempts to refute these positions are all specious. First, it
15 asserts that Nopuowoh has delayed his proceedings by seeking counsel and
16 appealing his third-country removal order. (ECF No. 13 at 10). It cites to no
17 precedent in support of this argument, nor does it address the cases Nopuowoh cited
18 in his amended petition that hold the opposite. Nopuowoh’s BIA appeal is a
19 “perfectly legitimate proceeding[] he is legally entitled to pursue, and it ill suits the
20 United States to suggest that he could shorten his detention by giving up these rights
21 and abandoning his asylum application.” *Masood v Barr*, No. 19-CV-07623-JD,
22 2020 WL 95633, at *3 (N.D. Cal. Jan. 8, 2020).

23 Respondent also argues that Nopuowoh cannot succeed because the amount
24 of time he will spend in future custody is “speculative,” (ECF No. 13 at 10), but
25 that is true in almost all cases. It is rare for a noncitizen to have a specific scheduled
26 removal date with which to accurately calculate future detention. The government
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1 fails to cite to any precedent suggesting that a “speculative” estimate of future
2 detention cannot satisfy the *Banda* test or any other applicable due process analysis.

3 In fact, the uncertain duration of Nopuowoh’s future detention weighs
4 heavily in his favor. As a district court in the Northern District of California noted:

5 In this case, the due process problems are virtually self-evident.
6 [Petitioner] has been in jail for nearly nine months, and there is no
7 reasonably certain end to his custody in sight. The government cannot
8 predict with any degree of confidence when the BIA appeal will be
9 resolved, or what the timeline might be with the remand request. Either
10 event could lead to further proceedings that might take up many more
months, or even years. This does not redound to [Petitioner’s]
discredit, as the government would have it.

11 *Masood*, 2020 WL 95633, at *3. Because of the difficulty in predicting the duration
12 of future detention, courts frequently grant habeas petitions where there is *a strong*
13 *likelihood* of lengthy detention. *See Banda*, 385 F. Supp. 3d at 1119 (“This [appeal]
14 process *may* take up to two years or longer.”) (emphasis added); *Abdul Kadir*, 2025
15 WL 2932654, at *5 (“Petitioner’s future detention *can* last several more months or
16 even years [during the adjudication of his case],”) (emphasis added). Here,
17 Nopuowoh has established a strong likelihood of lengthy detention due to his
18 pending BIA appeal.

19 Finally, the government fails to provide any basis for its argument that
20 Nopuowoh’s conditions of confinement do not “resemble penal confinement.” *See*
21 *Banda*, 385 F. Supp. 3d at 1119. Nopuowoh is currently detained at the Otay Mesa
22 Detention Center (“OMDC”). In *Kydyrali*, the district court—located here in the
23 Southern District and thus quite familiar with OMDC—explicitly stated that the
24 OMDC is “indistinguishable from penal confinement” as it is “a private, for-profit
25 detention center operated by CoreCivic, Inc., which also runs many state
26 penitentiaries.” 499 F. Supp. 3d at 773. Even setting aside controlling precedent on
27 OMDC’s conditions, Nopuowoh’s unrefuted allegations demonstrate severe
28 deprivation. Nopuowoh has asserted that the facility is unsanitary, he lacks

1 sufficient nutrition and potable water, and he is unable to obtain treatment for his
2 various medical and psychological conditions. (ECF No. 11 at 11). The government
3 fails to articulate how dire conditions of confinement must be to satisfy its
4 definition of penal confinement if Nopuowoh's situation falls short.

5 That Nopuowoh's medical conditions predate his detention is irrelevant, and
6 the government fails to offer any authority or explanation for why his preexisting
7 health status should alter the *Banda* analysis. To the contrary, the district court in
8 *Kydyrali* considered the detainee's "medical *history* of tuberculosis and chronic
9 pneumonia" when assessing the conditions of confinement. *See* 499 F. Supp. 3d at
10 773 (emphasis added).

11 Nor does it matter that the exacerbation of Nopuowoh's conditions is
12 "speculative." As with the length of future detention, Nopuowoh cannot be
13 expected to perfectly predict the future. But as was noted in *Kydyrali*, "confinement
14 in a facility where [petitioner] has little to no control over his surroundings and
15 limited ability to protect himself from [exposure to illness] further weighs in favor
16 of Petitioner." *Id.* It is thus not unreasonable for Nopuowoh to anticipate that, given
17 the conditions of confinement at OMDC, his medical and psychological conditions
18 will likely be exacerbated.

19 In sum, Respondent has failed to successfully demonstrate that any of the
20 *Banda* factors should weigh against Nopuowoh. Given all this, this Court should
21 find that Nopuowoh's detention of nine months without a bond hearing violates his
22 due process rights.

23 CONCLUSION

24 For the reasons stated above, Nopuowoh respectfully requests that this Court
25 grant his petition and order his immediate release (or, alternatively, provide him
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1 with a bond hearing or order a bond hearing before an IJ with safeguards to ensure
2 neutrality).

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4 Respectfully submitted,

5 Dated: July 15, 2026

6 s/ Alana L. McMains

7 Alana L. McMains

8 MCMAINS LAW, APC

9 Attorney for Petitioner
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