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

STEPHAN RYTOV,

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.

Civil Case No.: 26-cv-2954-JES-JLB

**Traverse in support of a petition for
writ of habeas corpus**

Stephan Rytov has been detained in immigration proceedings for over nine months, yet the government has never shown that he poses any danger to the community or risk of flight. He is likely to be detained for even longer as his case only recently went to the BIA on appeal. Mr. Rytov's prolonged detention with no justifying government interest violates the Due Process Clause. Contrary to the government's claims, no Supreme Court precedent prevents this Court from vindicating his due process rights, and many immigrants in this district have received bond hearings after equivalent—or even shorter—time in detention. This

1 Court should therefore order outright release—or, at the very least, put in place
2 additional procedural protections.

3 **ARGUMENT**

4 **I. Section 1252(g) does not deprive this Court of jurisdiction on any issue
5 in this petition.**

6 First, § 1252(g) does not bar review of “all claims arising from deportation
7 proceedings.” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482
8 (1999). Instead, courts “have jurisdiction to decide a purely legal question that does
9 not challenge the Attorney General’s discretionary authority.” *Ibarra-Perez v.*
10 *United States*, 154 F.4th 989, 996 (9th Cir. 2025) (cleaned up).

11 Section 1252(g) “does not prohibit challenges to unlawful practices merely
12 because they are in some fashion connected to removal orders.” *Id.* Instead, 1252(g)
13 is “limited . . . to actions challenging the Attorney General’s discretionary decisions
14 to initiate proceedings, adjudicate cases, and execute removal orders.” *Arce v.*
15 *United States*, 899 F.3d 796, 800 (9th Cir. 2018). It does not apply to arguments
16 that the government “entirely lacked the authority, and therefore the discretion,” to
17 carry out a particular action. *Id.* at 800. Thus, § 1252(g) applies to “discretionary
18 decisions that [the Secretary] actually has the power to make, as compared to the
19 violation of his mandatory duties.” *Ibarra-Perez*, 154 F.4th at 999.

20 The same logic applies to all of Mr. Rytov’s claims, because he challenges
21 only violations of ICE’s mandatory duties under the Constitution. Accordingly,
22 “[t]hough 8 U.S.C § 1252(g), precludes this Court from exercising jurisdiction over
23 the executive’s decision to ‘commence proceedings, adjudicate cases, or execute
24 removal orders against any alien,’ this Court has habeas jurisdiction over the issues
25 raised here, namely the lawfulness of [Mr. Rytov’s] continued detention.” *Y.T.D.*
26 *v. Andrews*, No. 25-CV-01100-JLT, 2025 WL 2675760, at *5 (E.D. Cal. Sept. 18,
27 2025). Many courts, including ones in this District, agree. *See, e.g., Markov v.*
28 *LaRose*, No. 25-CV-3811-JLS, 2026 WL 92069, at *1–2 (S.D. Cal. Jan. 13, 2026)

(finding that section 1252(g) does not bar due process claims and does not strip the Court of jurisdiction).

II. The Fifth Amendment’s Due Process Clause prohibits prolonged immigration detention without a bond hearing, contrary to Respondents’ arguments.

The Amended Petition explains that Mr. Rytov’s prolonged detention without a bond hearing violates the Fifth Amendment’s Due Process Clause. The return’s contrary arguments fail.

A. Mr. Rytov has a due process right.

As an initial matter, though the government spends much of the return arguing that § 1225(b) mandates Mr. Rytov’s detention, those points are irrelevant to the claim made here. Mr. Rytov concedes that he is subject to mandatory detention. He just claims that his mandatory detention with no showing of flight risk or danger violates the Constitution.

As relevant to that claim, the government contends that two Supreme Court precedents foreclose due process challenges in this context. The government argues that arriving immigrants like Mr. Rytov have no due process rights per *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 138–40 (2020). This Court should reject that disturbing argument, as “[m]ost courts” have. *Gao v. LaRose*, No. 25-CV-2084-RSH-SBC, 2025 WL 2770633, at *3 (S.D. Cal. Sept. 26, 2025); *see, e.g., Abdul Kadir v. Larose*, No. 25-CV-1045-LL-MMP, 2025 WL 2932654, at *4 (S.D. Cal. Oct. 15, 2025); *Cong v. Noem*, No. 25-CV-3730-GPC-DEB, 2026 WL 76566, at *3 (S.D. Cal. Jan. 9, 2026); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020) (Battaglia, J.); *Mardian v. Mayorkas*, 25-cv-3467-JLS (granting petition for arriving noncitizen, even though the government made this argument); *Raeva v. Mayorkas*, 25-cv-3175-JO (same).

That is because “*Thuraissigiam* addressed a noncitizen’s right to challenge admission, not detention.” *Abdul Kadir*, 2025 WL 2932654, at *4; *accord Cong v. Noem*, 2026 WL 76566, at *3 (“Though *Thuraissigiam* limits an arriving

1 noncitizen’s due process rights regarding *admission*, the court did not address the
2 issue of prolonged detention.” (emphasis added)).

3 It does not follow (1) that the political branches have the absolute right to
4 *detain* arriving immigrants forever, for no reason, with no process, or (2) that
5 arriving noncitizens have only those rights regarding *detention* that Congress
6 chooses to provide. “Nowhere in that decision did the Supreme Court suggest that
7 arriving aliens being held under § 1225(b) may be held indefinitely and
8 unreasonably with no due process implications, nor that such aliens have no due
9 process rights whatsoever.” *A.L. v. Oddo*, 761 F. Supp. 3d 822, 825 (W.D. Pa.
10 2025). Again, Mr. Rytov does not ask this Court to order his legal *admission*; he
11 merely seeks an end to his prolonged detention in a prison-like environment.

12 The government’s other leading Supreme Court case, *Shaughnessy v. United*
13 *States ex rel. Mezei*, 345 U.S. 206, 207-09 (1953), is even less on point. “The *Mezei*
14 Court explicitly grounded its decision in the special circumstances of a national
15 emergency and the determination by the Attorney General that Mezei presented a
16 threat to national security.” *Rosales-Garcia v. Holland*, 322 F.3d 386, 413–14 (6th
17 Cir. 2003); *accord Amado*, 2025 WL 3079052, at *5 (“*Mezei* involved a noncitizen
18 who was permanently excluded from the United States on security grounds, not a
19 detainee raising their due process rights in the context of detention without a bond
20 hearing.”). No one has ever deemed Mr. Rytov a danger or even a flight risk, much
21 less an emergency threat to national security. Indeed, that is the entire premise of
22 this petition: that the government cannot detain Mr. Rytov indefinitely without any
23 showing that that detention is necessary to serve a government interest.¹

24 **B. Mr. Rytov prevails under any due process factor standard.**

25 Finally, the government argues that Mr. Rytov’s over nine months in
26 detention—without the government ever proving why detention is necessary—is

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28 ¹ The Supreme Court has since called into question *Mezei*’s continued validity. See *Kydyrali*, 499 F. Supp. 3d at 772.

1 not long enough to have violated his due process rights. They attempt to argue this
2 by citing decisions that have found detention to be unreasonably prolonged where
3 noncitizens were detained for much longer. ECF 9 at 9. But courts have regularly
4 granted bond hearings for people detained for similar (and even shorter) amounts
5 of time. *Fofie v. Warden Otay Mesa Detention Center*, No. 26-CV-1900-JLS-MSB,
6 ECF 14 at 5 (S.D. Cal. May 29, 2026) (granting bond hearing for petitioner detained
7 over six months); *Bendekaca v. Brightman*, No. 26-CV-2934-JLS-BLM, 2026 WL
8 1400584, at 2 (S.D. Cal. May 19, 2026) (collecting cases); *Amando v. United States*
9 *Dep't of Just.*, No. 25-CV-2687-LL-DDL, 2025 WL 3079052, at *5 (S.D. Cal. Nov.
10 4, 2025) (collecting cases). Multiple years of detention is not required to raise a due
11 process violation.

12 While over nine months of detention “does not presumptively establish
13 unreasonably prolonged detention, it is also not so little time as to preclude
14 constitutional scrutiny.” *Babaveisi v. LaRose*, No. 25-CV-3746-GPC-SBC, 2026
15 WL 76565, at *6 (S.D. Cal. Jan. 9, 2026). The length of detention does not “serve
16 as a safe harbor or insulate Petitioner’s case from constitutional review.” *Sadeqi v.*
17 *LaRose*, No. 25-CV-2587-RSH-BJW, 2025 WL 3154520, at *3 (S.D. Cal. Nov. 12,
18 2025). Thus, Mr. Rytov satisfies the first, and “most important factor” in assessing
19 if a bond hearing is constitutionally required. *Banda v. McAleenan*, 385 F. Supp.
20 3d 1099, 1118 (W.D. Wash. 2019).

21 As to the second factor, future delays, the government does not make any
22 meaningful argument but claims that because Mr. Rytov’s case is on appeal, this
23 factor weighs against him. ECF 9 at 9. But the lengthy timelines for decisions in
24 immigration cases like Mr. Rytov’s are well documented—even for someone who
25 has moved onto appeal his case with the BIA. “While the Court cannot definitively
26 determine the duration of petitioner’s future detention, based on the current record,
27 it appears likely petitioner will face many more months and potentially years in
28 detention,” since whether the case is decided in Petitioner’s favor or not, there will

likely be an appeal that case last several more months or years. *Babaveisi*, 2026 WL 76565, at *6 (citing *Belqasim v. Bostock*, No. 25-CV-01282-LK-TLF, 2025 WL 3466971, at *9 (W.D. Wash. Oct. 28, 2025), report and recommendation adopted sub nom. *Belqasim v. Hermosillo*, No. 2:25-CV-01282-LK, 2025 WL 3170929 (W.D. Wash. Nov. 13, 2025). “[A] removal order may not become final until after the appeals Petitioner could file, to both the Board of Immigration Appeals and Ninth Circuit... These appeals can take a long time.” *Guatam v. Corr. Corp. of Am.*, No. 3:25-CV-3600-JES-DEB, 2026 WL 25846, at *5 (S.D. Cal. Jan. 5, 2026); *See also Abdul-Samed*, 2025 WL 2099343, at *7 (“Although the Court recognizes that future events are difficult to predict, the Court nevertheless finds that in the event Petitioner’s applications for relief from removal are denied, Petitioner’s possible administrative appeal and judicial review by the Ninth Circuit will be sufficiently lengthy such that this factor weighs in favor of Petitioner.”). Thus, this factor weighs heavily in Mr. Rytov’s favor.

III. Mr. Rytov’s argument regarding Immigration Judges’ neutrality is proper because the neutrality of a decision maker is a core right under the Due Process clause.

Finally, Respondent criticizes Mr. Rytov’s argument that IJs’ neutrality is compromised and says such an argument is “improper.” ECF 9 at 10. But there is nothing improper about this argument. “[A]n impartial decision maker is essential[]” to any due process determination. *See Goldberg v. Kelly*, 397 U.S. 254, 271 (1970); U.S. Const. amend. XIV, § 1. “To be disqualifying, personal bias must stem from a source other than knowledge a decision maker acquires from participating in a case.” *Bowens v. N.C. Dept. of Human Resources*, 710 F.2d 1015, 1020 (4th Cir. 1983) (citing *United States v. Grinnell Corp.*, 384 U.S. 563, 583 (1966)). Because due process always considers whether a decision maker is neutral, this argument is proper. But it is also well-founded based on several decisions by courts (including courts in this district) to order immediate release where IJs did not follow court orders or proper standards in bond hearings. *See Perez Velasquez*

1 v. *Bondi*, No. 26-cv-1759-GPC-DDL, 2026 WL 1042479 (S.D. Cal. Apr. 16, 2026)
2 (granting petitioner's second petition because the bond hearing conducted was
3 legally and constitutionally inadequate); *Singh v. LaRose*, No. 26-cv-1425-JLS-GC,
4 2026 WL 1387428 (S.D. Cal. May 18, 2026) (same); *Zarei v. LaRose*, No. 26-cv-
5 2335-GPC-MMP, 2026 WL 1415042 (S.D. Cal. May 19, 2026) (same); *A.D. v.*
6 *Oddo*, No. 25-460J, 2026 WL 1251470 (W.D. Pa. Feb. 12, 2026) (same).

7 The government's return also addresses, under this heading, an argument
8 regarding exhaustion. Courts have routinely rejected the argument that a petitioner
9 must exhaust administrative remedies because "[a]n exception to the exhaustion
10 requirement has been carved for constitutional challenges to . . . [DHS]
11 procedures." *Sola v. Holder*, 720 F.3d 1134, 1135 (9th Cir. 2013) (per curiam)
12 (quoting *Rashtabadi v. INS*, 23 F.3d 1562, 1567 (9th Cir. 1994)).

13 For all of the reasons stated in Petitioner's amended petition and in this
14 traverse, this Court should grant Mr. Rytov's petition and order immediate release,
15 or at the very least, a bond hearing.

16 Respectfully submitted,

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18 Dated: June 1, 2026

s/ Hannah Basalone

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