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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

NATNAEL NEGASH BEYENE,

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-3037-JLS-DDL

Traverse in Support of Petition for Writ of Habeas Corpus

INTRODUCTION

In his habeas petition, Mr. Beyene explained that he is a citizen of Ethiopia who has been detained without a bond hearing for seven months. However, the government maintains that Mr. Beyene remains subject to mandatory detention regardless of whether that detention has become prolonged. ECF No. 7 at 4–6. This Court should reject the government's disturbing argument that he has no due process interest in his own liberty, as "[m]ost courts" have. *Gao v. LaRose*, 805 F. Supp. 3d 1106, 1110 (S.D. Cal. 2025). It should also reject Respondents' argument that Mr. Beyene's detention is not unconstitutionally prolonged.[1]

ARGUMENT

I. Mr. Beyene has a due process right to an individualized custody determination because his detention has become prolonged.

In his amended petition, Mr. Beyene argued that he had a due process right to an individualized custody determination because his detention has become prolonged. In response, the government claims that Mr. Beyene has no due process right to release from custody at any time. ECF No. 7 at 4–6. It relies on cases that do not support that assertion but instead articulate the entry fiction doctrine regarding Congress's "plenary authority to decide which [noncitizens] to admit" into the country, *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 139 (2020), and *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953).

Neither the doctrine nor the cases address the due process constraints on *detention*. "*Mezei* involved a noncitizen who was permanently excluded from the

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[1] Respondents also claim that Mr. Beyene's claim is barred for lack of jurisdiction under 8 U.S.C. § 1252(g). ECF No. 7 at 3–4. But § 1252(g) does not prohibit challenges to detention "merely because they are in some fashion connected to removal orders." *Ibarra-Perez v. United States*, 154 F.4th 989, 997 (9th Cir. 2025).

United States on security grounds, not a detainee raising their due process rights in the context of detention without a bond hearing." *Amado v. U.S. Dept. of Justice*, 2025 WL 3079052, *5 (S.D. Cal. Nov. 4, 2025) (collecting cases). And "*Thuraissigiam* addressed a noncitizen's right to challenge admission, not detention." *Id.* (collecting cases). "At least five circuit courts have all since considered due process challenges to unreasonably prolonged mandatory detention under [another immigration statute] § 1226, and, tellingly, none of them referenced *Thuraissigiam* in their majority opinions." *Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 683 (W.D. Tex. 2025). As it stands, "the entry fiction doctrine does not trump the constitutional issues raised here." *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 771 (S.D. Cal. 2020).

Further, "[t]he *Mezei* Court explicitly grounded its decision in the special circumstances of a national emergency and the determination by the Attorney General that Mezei presented a threat to national security." *Rosales-Garcia v. Holland*, 322 F.3d 386, 413–14 (6th Cir. 2003). Here, the problem is that the government has *never* identified a specific reason why Mr. Beyene is a flight risk or a danger. The problem is that he has received no individual evaluation at all.

Moreover, the *Banda* factors weigh in Mr. Beyene's favor. Multiple courts have held that detention of a similar length has become "prolonged." *See Brissett v. Decker*, 324 F. Supp. 3d 444, 452 (S.D.N.Y. 2018); *Perez v. Decker*, No. 18-CV-5279 (VEC), 2018 WL 3991497, at *5 (S.D.N.Y. Aug. 20, 2018); *Masood v. Barr*, No. 19-CV-07623-JD, 2020 WL 95633, at *2 (N.D. Cal. Jan. 8, 2020). This factor therefore favors Mr. Beyene.

Second, as just noted, Mr. Beyene has reason to anticipate significant future detention, as he has appealed his case to the BIA and will likely appeal to the Ninth Circuit. ECF No. 5, Exh. A at ¶ 4. All told, "[t]his process may take up to two years or longer." *Banda*, 385 F. Supp. 3d at 1119. Because "Petitioner's future detention can last several more months or even years[,]" this factor favors Mr.

Beyene. Abdul Kadir v. Larose, No. 25CV1045-LL-MMP, 2025 WL 2932654, at *5 (S.D. Cal. Oct. 15, 2025).

Nevertheless, Respondents cite a decision from this Court denying a prolonged detention challenge. ECF No. 7 at 9 (citing *Markov v. Larose*, 25-CV-3811 JLS (SBC), 2026 WL 92069 (S.D. Cal. January 13, 2026)). But in a decision issued two weeks after *Markov*, this Court granted a prolonged detention case where the individual was on appeal at the BIA. *See Fernandes v. Warden,* 25-CV-3813 JLS (MSB) (S.D. Cal. January 26, 2026). In that decision, this Court explained:

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

Id. at *4–5. Here, as in *Markov*, Mr. Beyene's case is on appeal to the BIA. Exh. A at ¶ 4. Thus, Mr. Beyene's detention is—and will continue to be—prolonged.

Third, conditions of confinement weigh in favor of him. "Petitioner's confinement at [Otay Mesa Detention Center] is 'indistinguishable from penal confinement.'" *Abdul Kadir*, 2025 WL 2932654, at *5 (quoting *Kydyrali*, 499 F. Supp. 3d at 773).

Fourth and fifth, Mr. Beyene has not caused any unreasonable delays in his removal proceedings; thus, this factor is arguably neutral.

Sixth, regarding the likelihood that the removal proceedings will result in a final order of removal, Mr. Beyene has a prima facie claim for political asylum. *Id.* at ¶ 1. Accordingly, under the *Banda* factors, Mr. Beyene is entitled to release or a bond hearing.

Conclusion

For these reasons, this Court should grant the petition and order that Mr. Beyene receive a bond hearing at which the government bears the burden of showing by clear and convincing evidence that he is a danger or a flight risk.

Respectfully submitted,

Dated: June 9, 2026

s/ Kara Hartzler

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