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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT

TRAN, Thi Hoai Hoai Petitioner, v. MARKWAYNE MULLIN, Secretary of the Department of Homeland Security, PAMELA JO BONDI, 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. 3:26-cv-03135-RSH-GC **TRAVERSE FOR WRIT OF HABEAS CORPUS**

Introduction

The government's return to this petition establishes three facts dispositive in Petitioner's favor. First, Petitioner Tran, Thi Thu Hoai has been imprisoned at Otay Mesa Detention Center for over nine months—every day of which has been in a facility whose conditions courts in this district have repeatedly described as indistinguishable from penal confinement. Second, an immigration judge has already determined on a full merits record that Petitioner was tortured by Vietnamese authorities and would be tortured again if returned—granting her deferral of removal under the Convention Against Torture ("CAT"). *Return at 2; Exh. 3*. Third, the entire basis for any future detention is DHS's own last-minute administrative appeal, filed on the last permissible day, which DHS alone controls and which DHS alone can withdraw. The government even concedes that "the only delay in her immigration proceedings is due to the Respondent's appeal." *Return at 9.*

The government offers three arguments to justify continued imprisonment. None withstands scrutiny. Section 1252(g) does not strip jurisdiction over prolonged physical detention claims. *DHS v. Thuraissigiam*, 591 U.S. 103 (2020), addressed the right to a fuller asylum adjudication, not the right to be free from indefinite imprisonment—a categorically different constitutional question governed by *Zadvydas v. Davis*, 533 U.S. 678 (2001). And while the government relies heavily on this Court's prior decision in *Sadeqi v. LaRose*, No. 25-cv-2587-RSH-BJW, 2025 WL 3154520 (S.D. Cal. Nov. 12, 2025), that case found twelve months insufficient only "*without more*"—and Ms. Tran's case presents an abundance of "more": documented torture by the Vietnamese government, medical records confirming her prior injuries, an IJ's affirmative merits ruling in her favor, and a government that waited thirty full

days before filing a last-minute appeal to keep her imprisoned. This is not a *Sadeqi* case. The petition should be granted.

Argument

I. Section 1252(g) Does Not Bar This Court's Jurisdiction Over Petitioner's Prolonged Detention Claim.

Section 1252(g) strips jurisdiction only over causes or claims arising from three specific agency decisions: to "*commence proceedings*," "*adjudicate cases*," or "*execute removal orders*." 8 U.S.C. § 1252(g) (emphases added). The Supreme Court has held that this provision must be construed narrowly and does not reach "all claims relating in any way to deportation proceedings." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). A habeas petition challenging the *duration of physical detention* does not arise from any of those three enumerated actions.

Petitioner does not challenge DHS's decision to commence proceedings, the immigration judge's adjudication of her asylum claim, or the execution of any removal order. Petitioner challenges the *constitutional validity of her continued imprisonment* for nine months without any individualized determination that she poses a danger or flight risk. That claim arises under 28 U.S.C. § 2241 and the Fifth Amendment's Due Process Clause—not from the three discrete agency actions § 1252(g) covers. *See Zadvydas*, 533 U.S. at 687 (§ 2241 habeas "remains available as a forum for statutory and constitutional challenges" to immigration detention).

The government's cited cases—*Wang v. United States*, 2010 WL 11463156 (C.D. Cal. 2010), and *Herrera-Correra v. United States*, 2008 WL 11336833 (C.D. Cal. 2008)—are pre-2015 district court decisions involving claims other than prolonged detention and carrying no

precedential weight in this Court. Neither case involved a petitioner held for nine months after receiving a CAT grant who challenges the constitutional validity of ongoing imprisonment. Accepting the government's jurisdictional argument would mean federal courts could never review whether the indefinite detention of any arriving alien violates the Constitution—a proposition courts in this district have uniformly rejected. *See, e.g.*, *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 771 (S.D. Cal. 2020).

II. *Thuraissigiam* Does Not Foreclose Petitioner's Due Process Claim Against Prolonged Physical Detention.

DHS v. Thuraissigiam, 591 U.S. 103 (2020), addressed a specific and narrow question: whether an alien subject to expedited removal has a due process right to judicial review of the *merits* of an asylum officer's credible fear determination—that is, whether the Constitution required expanded access to the courts to challenge the substance of the government's admission decision. The Court held that such rights are limited to those Congress provided by statute. *Id.* at 107.

That question has nothing to do with this case. Petitioner does not ask this Court to expand the scope of her asylum adjudication or second-guess the immigration judge's merits determinations. She accepts those determinations—the IJ found that she would be tortured, and she agreed with that outcome. What Petitioner challenges is her *physical imprisonment* for nine months without any individualized determination that she poses a danger or risk of flight. The Supreme Court has long recognized that "freedom from bodily restraint has always been at the core of the liberty that [the Due Process Clause] protects." *Zadvydas*, 533 U.S. at 690. *Thuraissigiam* does not address, let alone disturb, that holding.

The government conflates two distinct constitutional questions: (1) what process is due before the government may reject an alien's *admission claim*, and (2) what process is due before the government may imprison a person's *body* for an extended period. *Thuraissigiam* answers only the first. *Zadvydas* answers the second, and it does so by recognizing that indefinite civil detention raises serious due process concerns regardless of the detainee's admission status. The government cites no authority from this district holding that *Thuraissigiam* displaces *Zadvydas* in the prolonged detention context—and courts in this district have continued to grant prolonged detention relief after *Thuraissigiam*. *See, e.g.*, *Gao v. LaRose*, 2025 WL 2770633 (S.D. Cal. Sept. 26, 2025); *Abdul Kadir v. Larose*, 2025 WL 2932654 (S.D. Cal. Oct. 15, 2025); *Amado v. United States Dep't of Just.*, 2025 WL 3079052 (S.D. Cal. Nov. 4, 2025); *Cong v. Noem*, 2026 WL 76566 (S.D. Cal. Jan. 9, 2026).

III. Petitioner's Detention Is Unconstitutionally Prolonged. This Case Presents the "More" That *Sadeqi* Anticipated.

The government relies heavily on this Court's decision in *Sadeqi v. LaRose*, No. 25-cv-2587-RSH-BJW, 2025 WL 3154520 (S.D. Cal. Nov. 12, 2025), which held that "almost 12 months" of detention, "*without more*," does not establish a due process violation. *Return at 9*. But *Sadeqi* expressly reserved the possibility that the result would be different where there *is* "more." Ms. Tran's case is the case *Sadeqi* left open. She presents not one but four independent categories of "more" that distinguish her case from any bare nine-or-twelve month detention claim.

A. The First "More": An IJ Has Already Found, on a Full Merits Record, That Petitioner Was Tortured and Would Be Tortured Again.

The government's own return confirms that on March 30, 2026, after a full merits hearing, the immigration judge granted Petitioner *both* withholding of removal and deferral of removal under CAT. *Return at 2; Exh. 3.* To receive these protections, Petitioner had to demonstrate—under the demanding "more likely than not" standard of 8 C.F.R. § 1208.16(c)(2)—that she would be tortured by Vietnamese authorities if removed. An Article I adjudicator made that affirmative finding on a full record, after hearing Petitioner's testimony and reviewing her documentary evidence.

This is not a case where the immigration proceedings are ongoing and the outcome uncertain. The merits of Petitioner's protection claim have been fully adjudicated in her favor. The government is not detaining Petitioner to ensure her eventual removal to Vietnam—the IJ found that removal is prohibited. It is detaining her solely to preserve its right to *appeal* that ruling. The government's interest in detention—premised on ensuring eventual removal and preventing flight from immigration proceedings that will result in removal—is at its constitutional nadir. *See Zadvydas*, 533 U.S. at 690 ("[A]n alien's liberty interest . . . is great" and the "essential predicate" to detention must be "a significant likelihood of removal in the reasonably foreseeable future").

B. The Second "More": Petitioner Was Previously Tortured by Vietnamese Authorities and Possesses Medical Documentation Proving It.

Ms. Tran does not merely fear future harm—she has already experienced it. Prior to her arrival in the United States, Vietnamese government authorities detained and beat her for eight consecutive days—the beating was severe enough to require hospitalization, and Ms. Tran possesses medical records from Vietnam documenting her injuries and confirming her hospitalization. *Id.* The immigration judge credited this evidence in granting CAT protection.

The psychological toll of Ms. Tran's current detention cannot be separated from this history. She is a person who was previously imprisoned and beaten by a government. She is now imprisoned in a facility that courts have described as "indistinguishable from penal confinement." *Abdul Kadir*, 2025 WL 2932654, at *5 (quoting *Kydyrali*, 499 F. Supp. 3d at 773). The conditions of her current detention—the locked cells, the razor wire, the armed guards, the color-coded prisoner uniforms—are not abstract to Ms. Tran. They are a daily echo of the imprisonment and violence she survived in Vietnam. This is categorically different from the ordinary prolonged detention case, and it is qualitatively different from the situation in *Sadeqi.*

C. The Third "More": Every Day of Future Detention Is Caused by DHS's Own Strategic Last-Day Appeal—a Fact DHS Itself Concedes.

The government devotes a single sentence to the second and third *Lopez* factors, arguing that "Respondents do not control how long the appeal will take." Return at 9. That argument is disingenuous and, in any event, beside the point. DHS does not merely fail to control the duration of its own appeal—it *controls whether to pursue that appeal at all*. DHS had thirty days to evaluate the IJ's decision. It waited every one of those thirty days before filing on April 29, 2026—the last permissible moment—knowing that its filing would automatically stay the IJ's decision and perpetuate Ms. Tran's imprisonment indefinitely. *See* 8 C.F.R. § 1003.6(b)(1). DHS then failed to serve Petitioner's counsel for five additional days.

More tellingly, the government's own brief eliminates any ambiguity about responsibility: "the only delay in her immigration proceedings is due to the Respondent's appeal." *Return at 9.* The third *Lopez* factor asks whether delays are "caused by the petitioner and the government."

Lopez v. Garland, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022). The government has conceded that no delay is caused by Petitioner. Every day of Ms. Tran's continued detention—past, present, and future—is the direct consequence of DHS's own voluntary litigation choices. That factor cannot, under any coherent application of *Lopez*, weigh against her.

And unlike the petitioner in *Sadeqi*, Ms. Tran did not appeal the IJ's ruling. She accepted it. She was prepared to be released. It was DHS, and DHS alone, that chose to file a last-minute appeal—and it is DHS, and DHS alone, that is responsible for the detention that appeal has caused and will continue to cause.

D. The Fourth "More": Future Detention Will Be Substantial—Measured in Additional Months or Years—Due Entirely to DHS's Appeal.

The second *Lopez* factor—likely duration of future detention—weighs heavily in favor of relief. BIA appeals in asylum cases routinely take six months or longer to resolve. If the BIA reverses the IJ's CAT grant, Petitioner will appeal to the Ninth Circuit. "[T]his process may take up to two years or longer." *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1119 (W.D. Wash. 2019). Meanwhile, Petitioner—who has already been detained for nine months in a jail-like facility, who was previously tortured by the government that would receive her if removed, and who an IJ has found is entitled to protection—faces an indefinite extension of that detention with no end in sight. "Petitioner's future detention can last several more months or even years." *Abdul Kadir*, 2025 WL 2932654, at *5. This factor weighs decidedly in favor of relief.

E. Taken Together, These Factors Compel Relief—and Distinguish This Case from *Sadeqi* and the Government's Other Cited Authority.

In *Sadeqi*, this Court found that "almost 12 months" of detention, standing alone, was insufficient "without more." 2025 WL 3154520, at *3. But *Sadeqi* explicitly left open the question of what additional circumstances might change the calculus. Ms. Tran presents all of them simultaneously:

> (1) An IJ has already granted her both withholding and deferral under CAT after a full merits hearing—she has won on the merits and her continued detention is not to ensure eventual removal but to preserve the government's appellate rights;
>
> (2) She was previously tortured by Vietnamese authorities for eight days and has medical documentation of those injuries—making her time in Otay Mesa's penal conditions a documented continuation of government-caused trauma;
>
> (3) All current and future delay is attributable entirely to DHS, which chose to appeal on the last possible day, failed to serve counsel for five additional days, and now maintains an appeal it could withdraw;
>
> (4) Future detention will be substantial—BIA review plus potential Ninth Circuit proceedings could add one to three years to the nine months already served.

The government's remaining cited cases—*Markov v. LaRose*, 2026 WL 92069 (S.D. Cal. Jan. 13, 2026), and the cluster of unpublished decisions—all involved petitioners without prior merits determinations in their favor and without documented histories of prior government-inflicted torture. They are inapposite. This case is not about length of detention alone. It is about an asylum seeker who was already tortured, who won before an immigration judge, and who remains imprisoned solely because the government filed a last-minute appeal and then blamed

the resulting detention on the BIA's timeline. That is the case *Sadeqi*'s "without more" exception was designed to address.

IV. Immediate Release Is the Appropriate Remedy.

For the reasons set forth in the petition and above, Petitioner respectfully requests that this Court order her immediate release. The government's justification for continued detention is at its lowest conceivable point: an immigration judge has already found on a full merits record that she is entitled to protection; all delay is caused by the government; and she presents no criminal history, no prior flight, and a lawful permanent resident sponsor ready to receive her in the United States.

Ordering another bond hearing before an Otay Mesa immigration judge—whose institutional independence has been severely compromised, as detailed in the petition—would add additional delay without ensuring a meaningful remedy. *See, e.g.*, *Moctezuma v. Henkey*, No. 1:25-CV-00741-BLW, 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026); *Santiago v. Noem*, No. EP-25-CV-361, 2025 WL 2792588, at *13–14 (W.D. Tex. Oct. 2, 2025). In the alternative, Petitioner requests a custody hearing before this Court, or at minimum a bond hearing before an IJ with the safeguards set forth in the petition: burden on DHS by clear and convincing evidence, retention of jurisdiction by this Court, and prohibition on ICE from invoking the automatic stay under 8 C.F.R. § 1003.19(i)(2) to defeat any favorable bond determination.

Conclusion

The government's own brief confirms every fact that makes Ms. Tran's detention unconstitutional. An immigration judge found on a full record that she would be tortured in Vietnam and granted her deferral of removal under CAT. Petitioner did not appeal. DHS did—on

the last possible day—triggering an automatic stay that perpetuates her imprisonment. The government now concedes that all delay is attributable to its own appeal, while arguing that it has no control over the resulting detention. It does. It can withdraw its appeal. Until it does, Ms. Tran sits in a jail-like facility, having already been beaten by one government, now imprisoned by another, waiting for an appellate body to review a ruling she won.

This is not *Sadeqi*. This case has the "more" that *Sadeqi* reserved. Petitioner respectfully requests that this Court grant the petition and order her immediate release.

DATED this 9th of June, 2026.

/s/ Morris Jacob Wilner
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