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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT

NGUYEN, Thi Hoai Lin

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-3137-BJC-VET

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Introduction

The government's return confirms the facts that matter most: Petitioner Nguyen, Thi Hoai Lien has been imprisoned at Otay Mesa Detention Center for over nine months; an immigration judge has already determined—after a full merits hearing—that she would be tortured if returned to Vietnam and granted her *both* withholding of removal and deferral of removal under the Convention Against Torture ("CAT"); Petitioner did not appeal that decision; and DHS, on the very last permissible day, filed an administrative appeal that triggered an automatic stay prolonging her detention indefinitely. See Return at 2; Exh. 3 (IJ Order). The government now argues that this Court lacks jurisdiction to review her detention, that she has no due process rights at all, and that nine months in a jail-like facility is not enough to warrant relief. Each argument fails.

The government's § 1252(g) argument would, if accepted, immunize the indefinite detention of arriving aliens from any judicial review—a result irreconcilable with *Zadvydas v. Davis*, 533 U.S. 678 (2001), and decades of habeas jurisprudence. Its *Thuraissigiam* argument conflates the right to a fuller asylum adjudication with the right not to be indefinitely imprisoned without any individualized determination of danger or flight risk—two categorically different constitutional questions. And its prolonged detention argument cherry-picks the cases where courts found the longest violations while ignoring this district's growing body of authority granting relief after seven to twelve months, particularly where—as here—an immigration judge has already vindicated the petitioner's claims on the merits. The petition should be granted and Petitioner released immediately.

Argument

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

Section 1252(g) strips jurisdiction over "any cause or claim . . . arising from the decision or action by the Attorney General to *commence proceedings*, *adjudicate cases*, or *execute removal orders*." 8 U.S.C. § 1252(g) (emphases added). The Supreme Court has interpreted this provision narrowly, as covering only those three "discrete" agency actions—not "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 these three discrete decisions.

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

The government's two cited district court 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 not prolonged detention cases and are inapposite. Neither involved a petitioner who had been imprisoned for nine months, received a CAT grant on the merits, and challenges the constitutional validity of continued detention pending an appeal filed by the government

itself. Accepting the government's § 1252(g) argument in the prolonged detention context would mean that no federal court could ever review whether the indefinite imprisonment of an arriving alien violates the Constitution—a reading that courts have uniformly rejected and that the Supreme Court's recognition of habeas jurisdiction in *Zadvydas* forecloses. *See, e.g.*, *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 771 (S.D. Cal. 2020) (exercising jurisdiction over prolonged detention habeas without addressing § 1252(g) as a bar).

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

The government's most frequently-cited case, *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103 (2020), does not decide the constitutional question presented here and courts in this district have repeatedly declined to apply it in the prolonged detention context.

Thuraissigiam addressed a single, narrow question: whether an alien in expedited removal proceedings had a due process right to a more searching judicial review of the *merits of his asylum claim*—i.e., whether the Constitution required courts to look past the statutory expedited removal scheme to determine whether he qualified for asylum or protection. *Id.* at 107. The Court held that such an alien's due process rights are those afforded by statute in the context of the admission decision itself. *Id.* at 138–40.

This case presents a categorically different question. Petitioner does not seek to expand the scope of her asylum adjudication or challenge the immigration judge's merits determinations. She accepts the IJ's decision—which granted her CAT protection. What she challenges is the *physical detention of her person* for nine months without any individualized finding that she poses a danger or flight risk. Freedom from bodily imprisonment "lies at the heart of the liberty

that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690. *Thuraissigiam* did not address or disturb *Zadvydas'* holding that prolonged civil detention implicates the core liberty interest protected by the Fifth Amendment—a liberty interest that exists independently of any right to be admitted to the United States.

The government conflates two distinct constitutional questions: (1) what process is due to an alien seeking entry into the United States regarding her *admission*, and (2) what process is due to any person—including an arriving alien—when the government imprisons her body for an extended period. *Thuraissigiam* answers only the first. *Zadvydas* answers the second, and it answers it by recognizing that indefinite civil detention raises serious due process concerns regardless of the alien's admission status.

Courts in this district have consistently reached this conclusion. In *Gao v. LaRose*, No. 25-CV-2084-RSH-SBC, 2025 WL 2770633, at *3 (S.D. Cal. Sept. 26, 2025), *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654, at *3–4 (S.D. Cal. Oct. 15, 2025), *Amado v. United States Dep't of Just.*, No. 25CV2687-LL(DDL), 2025 WL 3079052 (S.D. Cal. Nov. 4, 2025), and *Cong v. Noem*, No. 25-CV-3730-GPC-DEB, 2026 WL 76566 (S.D. Cal. Jan. 9, 2026), among many others, courts in this district have applied the prolonged detention due process framework to § 1225(b) arriving aliens *after Thuraissigiam* without accepting the government's argument that *Thuraissigiam* extinguishes the claim. The *Mendoza-Linares* and *Zelaya-Gonzalez* decisions cited by the government represent a minority view that has not been widely followed in this district, particularly as more recent decisions have continued to grant relief.

III. Petitioner's Nine Months of Imprisonment Is Unconstitutionally Prolonged, Particularly Given the CAT Grant and DHS's Own Role in Causing Future Detention.

Even under the government's preferred framework—the three-factor *Lopez* test—each factor favors Petitioner. And the government's argument ultimately defeats itself: it concedes that all current delay is caused by its own appeal. When an immigration judge has already granted the petitioner CAT protection on the merits, the government's argument for continued detention reaches its lowest conceivable justification.

A. Nine Months of Detention Is Sufficient Under Any Standard Applied in This District.

The government marshals cases finding due process violations at 19, 27, 32, 36, and 42 months to suggest that nine months is not enough. Return at 8–9. But those are the *upper end* of the spectrum—the cases where courts could not help but grant relief. They do not set a floor. Courts in this district have granted relief at much shorter intervals. *Amado*, 2025 WL 3079052, at *5 (finding "detention over seven months without a bond hearing weighs toward a finding that it is unreasonable" in the S.D. Cal.). Other courts have granted bond hearings for detention between nine and eleven months. *See Brissett v. Decker*, 324 F. Supp. 3d 444, 452 (S.D.N.Y. 2018) ("over nine months"); *Perez v. Decker*, No. 18-CV-5279, 2018 WL 3991497, at *5 (S.D.N.Y. Aug. 20, 2018) ("more than nine months"); *Masood v. Barr*, No. 19-CV-07623-JD, 2020 WL 95633, at *2 (N.D. Cal. Jan. 8, 2020) ("nearly nine months"). And under the six-month bright-line test some courts apply, Petitioner qualifies automatically. *See Rodriguez v. Nielsen*, No. 18-CV-04187-TSH, 2019 WL 7491555, at *6 (N.D. Cal. Jan. 7, 2019).

The government cites *Sadeqi v. LaRose*, 2025 WL 3154520 (S.D. Cal. Nov. 12, 2025), for the proposition that twelve months is not unreasonable "without more." But this case *has* the "more." An immigration judge determined on the merits that Petitioner would be tortured if returned to Vietnam—the gravest possible finding in her favor. The government is maintaining her imprisonment not to ensure an eventual removal, but to preserve its right to appeal a protective ruling. That is qualitatively different from any "without more" scenario, and *Sadeqi* does not control.

B. The Lopez Factors All Favor Petitioner.

First, the length of detention—the "most important factor," *Sanchez-Rivera v. Matuszewski*, 2023 WL 139801, at *6—strongly favors Petitioner. "[I]t is important to bear in mind the context: The detention that is being examined here is the detention of a human being who has never been found to pose a danger to the community or to be likely to flee if released." *Jamal A. v. Whitaker*, 358 F. Supp. 3d 853, 859 (D. Minn. 2019). Nine months of jail-like confinement at Otay Mesa—for a person who presents no criminal history, no prior findings of danger or flight risk, and who has already been granted protection on the merits—weighs strongly in favor of relief.

Second, the likely duration of future detention favors Petitioner. The government's response to this factor is telling: it acknowledges that "the only delay in her immigration proceedings is due to the Respondent's [DHS's] appeal," but asserts that "Respondents do not control how long the appeal will take." Return at 9. This misses the point. DHS controls *whether* to pursue the appeal at all. DHS chose to file its appeal on the very last permissible day—thirty days after the IJ's decision—while Petitioner sat in detention. DHS continues to maintain that appeal. The entire duration of Petitioner's future detention is a direct, foreseeable consequence of

DHS's own voluntary litigation decision. "Petitioner's future detention can last several more months or even years." *Abdul Kadir*, 2025 WL 2932654, at *5. This factor strongly favors Petitioner.

Third, the delays factor favors Petitioner. The government itself concedes that "the only delay in her immigration proceedings is due to the Respondent's [DHS's] appeal." Return at 9. No delay in the current proceedings is attributable to Petitioner. DHS waited the full thirty days before filing its appeal. DHS then failed to serve undersigned counsel for five additional days after filing. Every day of Petitioner's continued detention past April 29, 2026 is attributable to DHS, not Petitioner. A factor designed to penalize petitioners who cause their own detention cannot weigh against Petitioner when the government has conceded that all delay is of its own making.

C. The IJ's Grant of Both Withholding and Deferral of Removal Under CAT Elevates This Case Above the Ordinary and Makes Immediate Release the Appropriate Remedy.

The government's brief does not grapple with the most powerful feature of this case: an immigration judge has already adjudicated Petitioner's claim on the merits and granted her *both* withholding of removal and deferral of removal under the Convention Against Torture. Exh. 3 (IJ Order). To receive withholding of removal under CAT, an applicant must demonstrate that it is "more likely than not" that she would be tortured by or with the acquiescence of Vietnamese authorities. 8 C.F.R. § 1208.16(c)(2). To receive deferral of removal, she must meet the same standard and the IJ must determine that deferral is appropriate under the specific facts presented. *Id.* § 1208.17. Both forms of protection were granted here. The IJ found—on a full record, after a merits hearing—that it is more likely than not that Petitioner would be tortured if returned to Vietnam.

The government's interest in continued detention is constitutionally premised on ensuring eventual removal and preventing flight risk. But where an IJ has found that Petitioner *cannot be removed* to her designated country of removal, that premise is fatally undermined. The government is not detaining Petitioner to ensure her eventual removal to Vietnam—it is detaining her to preserve its right to *appeal* an adverse ruling. The Due Process Clause does not permit the government to imprison a person in order to maintain the possibility of a future removal that an immigration judge has already found to be prohibited. *See Zadvydas*, 533 U.S. at 690 ("an alien's liberty interest is . . . great" and the government must have a "substantial justification" for continued detention).

This also decisively answers the fifth *Lopez* factor that the government sidesteps: the likelihood that continued proceedings will result in a different final order. The government must convince the BIA to reverse the IJ's factual finding that torture is more likely than not—a finding supported by a full hearing record including Petitioner's testimony and documentary evidence. The BIA reviews the IJ's factual determinations with deference. DHS faces an uphill battle, and Petitioner's continued imprisonment pending that battle cannot be justified.

Notably, the government's own brief confirms that Petitioner *reserved* her right to appeal but *did not exercise it*. Return at 2. She accepted the IJ's partial ruling and sought only to be released from detention pending its becoming final. DHS alone chose to appeal, and DHS alone chose to do so on the last possible day. The automatic stay triggered by that last-minute filing—keeping a torture survivor imprisoned while the government appeals a ruling in her favor—is precisely the kind of government exploitation of procedural mechanisms that this Court's equitable habeas powers exist to remedy.

IV. Immediate Release Is the Most Appropriate Remedy.

For the reasons set forth in the petition, Petitioner respectfully requests that this Court order her immediate release. Where the government's justification for continued detention is at its weakest—an IJ has already found on the merits that Petitioner merits protection, all delay is caused by the government, and the detainee presents no criminal history and has a sponsor in the United States—ordering another bond hearing before a potentially compromised immigration judge adds further 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) (ordering immediate release rather than further delay through a bond hearing); *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 bond hearing before this Court, or at minimum a bond hearing before an immigration judge with the safeguards set forth in the petition—including placement of the burden on DHS, retention of jurisdiction by this Court, and a bar on ICE invoking the automatic stay provisions under 8 C.F.R. § 1003.19(i)(2) to defeat any favorable bond determination.

Conclusion

The government's own exhibits confirm what the petition alleges: an immigration judge found that Petitioner would be tortured if returned to Vietnam, granted her CAT protection, and the only reason she remains imprisoned is that DHS filed an appeal on the last possible day and failed to notify her counsel for five additional days thereafter. The government's three legal arguments do not withstand scrutiny. This Court has jurisdiction, *Thuraissigiam* does not foreclose the due process claim, and nine months of jail-like imprisonment—pending an appeal

that DHS alone caused, of a merits ruling that DHS alone lost—is unconstitutionally prolonged. Petitioner respectfully requests that this Court grant the writ and order her immediate release.

DATED this 5 of June, 2026.

/s/ Morris Jacob Wilner
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Attorney for Petitioner