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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SHATSKOV MAKSIM,

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-3199-RBM-JAC

Traverse in support of a petition for writ of habeas corpus

Shatskov Maksim has been detained in immigration proceedings for over eight 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. Maksim'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

Court should therefore order Mr. Maksim receive a bond hearing.

ARGUMENT

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

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

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

The same logic applies to all of Mr. Maksim's claims, because he challenges only violations of ICE's mandatory duties under the Constitution. Accordingly, "[t]hough 8 U.S.C § 1252(g), precludes this Court from exercising jurisdiction over the executive's decision to 'commence proceedings, adjudicate cases, or execute removal orders against any alien,' this Court has habeas jurisdiction over the issues raised here, namely the lawfulness of [Mr. Maksim's] continued detention." *Y.T.D. v. Andrews*, No. 25-CV-01100-JLT, 2025 WL 2675760, at *5 (E.D. Cal. Sept. 18, 2025). Many courts, including ones in this District, agree. *See, e.g.*, *Markov v. 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. Maksim's prolonged detention without a bond hearing violates the Fifth Amendment's Due Process Clause. The return's contrary arguments fail.

A. Mr. Maksim has a due process right.

As an initial matter, though the government spends much of the return arguing that § 1225(b) mandates Mr. Maksim's detention, those points are irrelevant to the claim made here. Mr. Maksim 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 noncitizen's due process rights regarding *admission*, the court did not address the issue of prolonged detention." (emphasis added)).

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

The government's other leading Supreme Court case, *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 207-09 (1953), is even less on point. "The *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); *accord Amado,* 2025 WL 3079052, at *5 ("*Mezei* involved a noncitizen who was permanently excluded from the United States on security grounds, not a detainee raising their due process rights in the context of detention without a bond hearing."). No one has ever deemed Mr. Maksim a danger or even a flight risk, much less an emergency threat to national security. Indeed, that is the entire premise of this petition: that the government cannot detain Mr. Maksim indefinitely without any showing that that detention is necessary to serve a government interest.[1]

B. Mr. Maksim prevails under any due process factor standard.

Finally, the government argues that Mr. Maksim's over eight months in detention—without the government ever proving why detention is necessary—is not long enough to have violated his due process rights. They attempt to argue this by citing decisions that have found detention to be unreasonably prolonged where

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

noncitizens were detained for much longer. ECF 7 at 9. But courts have regularly granted bond hearings for people detained for similar (and even shorter) amounts of time. *Fofie v. Warden Otay Mesa Detention Center*, No. 26-CV-1900-JLS-MSB, ECF 14 at 5 (S.D. Cal. May 29, 2026) (granting bond hearing for petitioner detained over six months); *Bendekaca v. Brightman*, No. 26-CV-2934-JLS-BLM, 2026 WL 1400584, at 2 (S.D. Cal. May 19, 2026) (collecting cases); *Amando v. United States Dep't of Just.*, No. 25-CV-2687-LL-DDL, 2025 WL 3079052, at *5 (S.D. Cal. Nov. 4, 2025) (collecting cases). "As another court in this District noted, though, "[c]ourts have found detention over seven months without a bond hearing weighs toward a finding that it is unreasonable." *Hussain v. LaRose*, No. 26-CV-194-RBM-MSB, 2026 WL 206715, *3 (S.D. Cal. Jan. 27, 2026) (quoting *Abdul Kadir v. LaRose*, 2025 WL 2932654, at *5 (S.D. Cal. Oct. 15, 2025)). Multiple years of detention is not required to raise a due process violation.

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

As to the second factor, future delays, the government does not make any meaningful argument but claims that because Mr. Maksim's case is on appeal, this factor weighs against him. ECF 7 at 9. But the lengthy timelines for decisions in immigration cases like Mr. Maksim's are well documented—even for someone who has moved onto appeal his case with the BIA. "While the Court cannot definitively determine the duration of petitioner's future detention, based on the

current record, it appears likely petitioner will face many more months and potentially years in 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. Maksim's favor.

Finally, Respondents contend Mr. Maksim has not shown any evidence that his detention at Otay Mesa Detention Center ("OMDC") resembles penal confinement. ECF 7 at 9. But the authority cited by Mr. Maksim lays that out quite clearly: Detainees at the OMDC are "locked up behind razor wire and concrete walls in a secured facility, forced to wear a color-coded prisoner jump suit, forbidden from accessing the internet, restricted access to outdoor space, restricted on visitation, and guarded at all times with armed guards authorized to inflict punishment for violations of rules." *Abdul Kadir v. Larose*, No. 25-cv-1045-LL-MMP, 2025 WL 2932654, at *4 (S.D. Cal. Oct. 15, 2025).

In fact, individuals charged with federal criminal convictions are regularly incarcerated at the facility. A recent review by the California Department of Justice laid out just how similar detainees' experience of OMDC is to that of people

detained for criminal matters. "Otay Mesa is the only facility in California with a policy and practice to strip search detainees after each non-legal contact visit. Detainees report that this practice has an overwhelming negative impact on the mental health and dignity of detainees." Rob Bonta et al., *Immigration Detention in California: A Review of Conditions of Confinement*, California Department of Justice 117 (2026), https://oag.ca.gov/system/files/media/immigration-detention-2026.pdf. In these jail-like conditions, Mr. Maksim contends with the same jail-like confinements .

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

Respectfully submitted,

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s/ Hannah Basalone

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