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9
10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA
12

13 Danila Komarov,

14 Petitioner,

15 v.

16 Christopher J. LaRose, *Warden,*
17 *Otay Mesa Detention Center,*

18 Respondent.

Civil Case No.: 26-cv-3530-LL-SBC

**Traverse in Support of
Petition for Writ of Habeas
Corpus**

19 INTRODUCTION

20 In his habeas petition, Mr. Komarov explained that he is a citizen
21 of Russia who has been detained without a bond hearing for more than
22 eight months. However, the government maintains that Mr. Komarov
23 remains subject to mandatory detention regardless of whether that
24 detention has become prolonged. Dkt. No. 9 at 3–10. This Court should
25 reject the government’s disturbing argument that he has no due
26 process interest in his own liberty, as “[m]ost courts” have. *Gao v.*
27 *LaRose*, 805 F. Supp. 3d 1106, 1110 (S.D. Cal. 2025).
28

ARGUMENT

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

A. **Mr. Komarov is not barred from relief under 8 U.S.C. § 1252(g).**

In its return, the government contends that Mr. Komarov's claim is barred by 8 U.S.C. § 1252(g). Dkt. No. 9 at 3–4. But its argument is unavailing.

Section 1252(g) states that, except as otherwise provided in § 1252, “no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.” 8 U.S.C. § 1252(g). The government argues that, since Mr. Komarov's claims of unlawful detention “necessarily arise from the Department of Homeland Security's decision to commence removal proceedings,” § 1252(g) precludes any relief for Mr. Komarov. Dkt. No. 9 at 3. Not so.

As Judge Huie has explained, the Supreme Court has interpreted the language in the jurisdiction-stripping provision of Section 1252(g) narrowly, “limiting it to three discrete actions: the decision or action to *commence* proceedings, *adjudicate* cases, or *execute* removal orders.” *Gao*, 805 F. Supp. 3d at 1108 (cleaned up) (emphasis in original) (citing *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999)). Thus, for the government to prevail, it must argue that Mr. Komarov's due process challenge to his detention “arises from” one of those enumerated actions. But, while “it may be argued that this is so in the sense that if those actions had never been taken, [Mr. Komarov] would not be in custody at all,” that “expansive interpretation . . . would

1 lead to staggering results.” *Jennings v. Rodriguez*, 583 U.S. 281, 293
2 (2018) (plurality opinion of Alito, J., joined by Roberts, C.J., and
3 Kennedy, J.).

4 Here, “[Mr. Komarov] is seeking to review the legality of his
5 detention . . . rather than challenging the decision to commence
6 proceedings, the adjudication of his removal case, or an action to execute
7 his removal order.” *Gao*, 805 F. Supp. 3d at 1109. Put differently, Mr.
8 Komarov seeks to enforce his constitutional right to due process, not the
9 legitimacy of the removal proceedings or any removal order. As such, §
10 1252(g) does not apply, and this Court has jurisdiction to reach the
11 merits of Mr. Komarov’s claim. *See Garcia v. Noem*, 803 F. Supp. 3d
12 1064, 1073 (S.D. Cal. 2025).

13 **B. Mr. Komarov’s detention has been unconstitutionally**
14 **prolonged and he is entitled to a bond hearing.**

15 In his petition, Mr. Komarov argued that his prolonged detention
16 had deprived him of his due process rights, and asked this Court to grant
17 him a bond hearing. Dkt. No. 8 at 7–10. In response, the government
18 claims that Mr. Komarov has no due process right to release from
19 custody at any time. Dkt. No. 9 at 4–10. It relies on cases that do not
20 support that assertion but instead articulate the entry fiction doctrine
21 regarding Congress’s “plenary authority to decide which [noncitizens] to
22 admit” into the country, *Department of Homeland Security v.*
23 *Thuraissigiam*, 591 U.S. 103, 139 (2020), and *Shaughnessy v. United*
24 *States ex rel. Mezei*, 345 U.S. 206 (1953).

25 Neither the doctrine nor the cases address the due process
26 constraints on *detention*. “*Mezei* involved a noncitizen who was
27 permanently excluded from the United States on security grounds, not
28 a detainee raising their due process rights in the context of detention

1 without a bond hearing.” *Amado v. U.S. Dept. of Justice*, 2025 WL
 2 3079052, at *5 (S.D. Cal. Nov. 4, 2025) (collecting cases). And
 3 “*Thuraissigiam* addressed a noncitizen’s right to challenge admission,
 4 not detention.” *Id.* (collecting cases). “At least five circuit courts have
 5 all since considered due process challenges to unreasonably prolonged
 6 mandatory detention under [another immigration statute] § 1226, and,
 7 tellingly, none of them referenced *Thuraissigiam* in their majority
 8 opinions.” *Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 683 (W.D. Tex.
 9 2025). As it stands, “the entry fiction doctrine does not trump the
 10 constitutional issues raised here.” *Kydyrali v. Wolf*, 499 F. Supp. 3d
 11 768, 771 (S.D. Cal. 2020).

12 Further, “[t]he *Mezei* Court explicitly grounded its decision in the
 13 special circumstances of a national emergency and the determination
 14 by the Attorney General that Mezei presented a threat to national
 15 security.” *Rosales-Garcia v. Holland*, 322 F.3d 386, 413–14 (6th Cir.
 16 2003). Here, the problem is that the government has *never* identified a
 17 specific reason why Mr. Komarov is a flight risk or a danger. The
 18 problem is that he has received no individual evaluation at all.

19 For instance, the government relies on a recent decision from this
 20 district denying a prolonged detention challenge. Dkt. No. 9 at 9 (citing
 21 *Markov v. Larose*, No. 25-CV-3811 JLS (SBC), 2026 WL 92069 (S.D.
 22 Cal. Jan. 13, 2026)). But in a decision issued two weeks after *Markov*,
 23 the same judge granted relief in a prolonged detention case where the
 24 individual was on appeal at the BIA. See *Fernandes v. Warden*, No. 25-
 25 CV-3813 JLS (MSB), Dkt. No. 12 (S.D. Cal. Jan. 26, 2026). In that
 26 decision, the judge explained:

27 As to the likely duration of future detention, Petitioner argues
 28 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*, 19-CV-07623-JD, 2020 WL 95633, at *3 (N.D. Cal. Jan. 8, 2020). . . . [R]espondents 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, Mr. Komarov has filed an appeal to the BIA and, if necessary, will continue his appeal to the Ninth Circuit. See Dkt. No. 8-1 at ¶ 5. Thus, Mr. Komarov’s detention is—and will continue to be—prolonged.

“When deciding whether a petitioner’s continued detention would violate the Due Process clause, many district courts have looked to the factors articulated in *Banda v. McAleenan* [385 F. Supp. 3d 1099 (W.D. Wash. 2019)].” *Singh v. LaRose*, No. 26-CV-0842-BTM-BLM, 2026 WL 684654, at *3 (S.D. Cal. Mar. 10, 2026). These include: (1) the total length of detention to date; (2) the likely duration of future detention; (3) the conditions of detention; (4) delays in the removal proceedings caused by the detainee; (5) delays in the removal proceedings caused by the government; and (6) the likelihood that the removal proceedings will result in a final order of removal. See *id.* Taken together, those factors weigh in Mr. Komarov’s favor.

First, multiple courts have held that detention has become “prolonged” at, or around, the length of time that Mr. Komarov has already been in custody—more than eight 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 (VEC), 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”). This factor therefore favors Mr. Komarov.

1 Second, as just noted, Mr. Komarov has reason to anticipate
2 significant future detention. While his asylum application was already
3 denied by the immigration judge, Mr. Komarov has filed a notice of
4 appeal, and it is impossible to predict how many more months will pass
5 before Mr. Komarov's appeal is decided. *See* Dkt. No. 8-1 at ¶¶ 4–5.
6 Further, he intends to appeal any adverse decision to the Ninth
7 Circuit, if necessary. *Id.* at ¶ 5. All told, “[t]his process may take up to
8 two years or longer.” *Banda*, 385 F. Supp. 3d at 1119. Because
9 “Petitioner's future detention can last several more months or even
10 years[,]” this factor favors Mr. Komarov. *Abdul Kadir v. Larose*, No.
11 25CV1045-LL-MMP, 2025 WL 2932654, at *5 (S.D. Cal. Oct. 15, 2025).

12 Third, the conditions of confinement weigh in favor of Mr.
13 Komarov. “Petitioner's confinement at [Otay Mesa Detention Center] is
14 ‘indistinguishable from penal confinement.’” *Abdul Kadir*, 2025 WL
15 2932654, at *5 (quoting *Kydyrali*, 499 F. Supp. 3d at 773). What's
16 more, Mr. Komarov suffers from a medical condition that he never had
17 prior to his confinement. *See* Dkt. No. 8-1 at ¶ 6.

18 Fourth and fifth, Mr. Komarov has not caused any unreasonable
19 delays in his removal proceedings. Nonetheless, it took the
20 immigration judge some three months to adjudicate his application.
21 These factors weigh in favor of Mr. Komarov. At worst, they are
22 neutral.

23 Sixth, regarding the likelihood that the removal proceedings will
24 result in a final order of removal, Mr. Komarov has a pending asylum
25 claim. At most, this factor is neutral, since this Court is not in a
26 position to evaluate Mr. Komarov's claim on the merits. *See Singh*,
27 2026 WL 684654, at *4.

28 Accordingly, under the *Banda* factors, Mr. Komarov is entitled to

1 release or a bond hearing.

2 **CONCLUSION**

3 For these reasons, this Court should grant the petition and order
4 Mr. Komarov's immediate release. But at a minimum, it should order
5 that he receive a bond hearing at which the government bears the
6 burden of showing by clear and convincing evidence that he is a danger
7 or a flight risk.

8 Respectfully submitted,

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10 Dated: July 23, 2026

s/ Paul A. Barr

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