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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 HAMIDEH SADEQI,

12 Petitioner-Plaintiff,

13 v.

14 CHRISTOPHER J. LAROSE, et al.

15 Respondents-Defendants.

Case No.: 3:25-cv-02587-RSH-BJW

**PETITIONER'S TRAVERSE
SUPPORTING PETITION FOR
WRIT OF HABEAS CORPUS**

1 Petitioner Hamideh Sadeqi replies to Respondents' Return, stating as follows:

2 **A. Ms. Sadeqi's Classification as an "Arriving Alien" and Subjection to 8 U.S.C.**
3 **§ 1225(b)(1) Notwithstanding, She Has Due Process Rights Beyond Those**
4 **That Congress Has Provided, and Thuraissigiam Does Not Bar Substantive**
5 **Due Process Claims**

6 Respondents argue that under the Supreme Court's decision in Department of
7 Homeland Security v. Thuraissigiam, 591 U.S. 103 (2020), Petitioner as an "arriving
8 alien" has no due process rights beyond those that Congress has provided. ECF No. 10 at
9 19. In Thuraissigiam, the Supreme Court rejected a habeas petitioner's argument that the
10 due process clause conferred rights to challenge his order of expedited removal beyond
11 those established by Congress, stating that "an alien at the threshold of initial entry
12 cannot claim any greater rights under the Due Process Clause." 591 U.S. at 107. The
13 petitioner in that case had "attempted to enter the country illegally and was apprehended
14 just 25 yards from the border." Id.

15 The Supreme Court determined that the "political department of the government"
16 had plenary authority to admit or exclude aliens seeking initial entry, and thus "an alien
17 in respondent's position has only those rights regarding admission that Congress has
18 provided by statute." Id. at 139-40. Respondents argue that because Petitioner is an
19 "arriving alien," due process provides her nothing beyond the mandatory detention
20 scheme established by Section 1225(b)(1).
21

22 Although, as Respondents correctly point out, following the Supreme Court's
23 decision in Thuraissigiam, some district courts have adopted Respondents' reasoning to
24

1 dismiss or deny habeas petitions in the context of arriving aliens subject to mandatory
2 detention under Section 1225(b)(1),¹ however, most courts have ruled otherwise. See
3 Abdul-Samed v. Warden of Golden State Annex Det. Facility, No. 25-cv-98-SAB-HC,
4 2025 WL 2099343, at *6 (E.D. Cal. July 25, 2025) ("Although the Ninth Circuit has yet
5 to take a position on whether due process requires a bond hearing for noncitizens
6 detained under 8 U.S.C. § 1225(b) ... 'essentially all district courts that have considered
7 the issue agree that prolonged mandatory detention pending removal proceedings,
8 without a bond hearing, will—at some point—violate the right to due process.") (citing
9 Martinez v. Clark, No. C18-1669-RAJ-MAT, 2019 WL 5968089, at *6 (W.D. Wash.
10 May 23, 2019)); Kydyrali v. Wolf, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020) ("[T]he
11 Court joins the majority of courts across the country in concluding that an unreasonably
12 prolonged detention under 8 U.S.C. § 1225(b) without an individualized bond hearing
13 violates due process.").

14
15
16 Recently, this Court applied the same reasoning as the majority of courts, holding
17 that a petitioner detained under Section 1225(b)(1) may assert a due process challenge to
18 prolonged mandatory detention. Mingzhi Gao v. Larose, No. 25-cv-2084-RSH-SBC,
19 2025 WL 495253, at *4 (S.D. Cal. Sep. 26, 2025).

20
21
22 ¹ E.g. Petgrave v. Aleman, 529 F. Supp. 3d 665, 669 (S.D. Tex. 2021) ("As far as Petitioner
23 is concerned, whatever procedure Congress has authorized is sufficient due process.");
24 Gonzales Garcia v. Rosen, 513 F. Supp. 3d 329, 336 (W.D.N.Y. 2021) ("Petitioner is on the
threshold of initial entry into the United States and he accordingly is not entitled to
procedural protections beyond those provided by statute.")

1 There, this Court agreed with the majority position that a petitioner detained under
2 Section 1225(b)(1) may assert a due process challenge to prolonged mandatory detention
3 without a bond hearing. It agreed with those district courts that interpret Thuraissigiam as
4 circumscribing an arriving alien's due process rights to admission, rather than limiting
5 that person's ability to challenge detention. See A.L. v. Oddo, 761 F. Supp. 3d 822, 825
6 (W.D. Pa. 2025) ("Nowhere in [Thuraissigiam] did the Supreme Court suggest that
7 arriving aliens being held under § 1225(b) may be held indefinitely and unreasonably
8 with no due process implications, nor that such aliens have no due process rights
9 whatsoever."); Hernandez v. Wofford, No. 25-cv-986-KES-CDB (HC), 2025 WL
10 2420390, at *3 (E.D. Cal. Aug. 21, 2025) ("Although the Supreme Court has described
11 Congress's power over the 'policies and rules for exclusion of aliens' as 'plenary,' and held
12 that this court must generally 'defer to Executive and Legislative Branch decision-making
13 in that area,' it is well-established that the Due Process Clause stands as a significant
14 constraint on the manner in which the political branches may exercise their plenary
15 authority'—through detention or otherwise.") (citations omitted); Padilla v. ICE, 704 F.
16 Supp. 3d 1163, 1171-72 (W.D. Wash. 2023) ("The holding in Thuraissigiam does not
17 foreclose Plaintiffs' due process claims which seek to vindicate a right to a bond hearing
18 with certain procedural protections.").

1 Lastly, Mezei² also does not help the government as the government does not
2 contend that this case involves particularized national security risks or emergency
3 regulations, as in *Mezei*, 345 U.S. at 214-16. See Jennings v. Rodriguez, 583 U.S. 281,
4 340 (2018) (Breyer, J., dissenting); Jean v. Nelson, 472 U.S. 846, 872 (1985) (Marshall,
5 J., dissenting); Mezei, 345 U.S. at 217 (Black, J., dissenting).
6

7 Therefore, this Court should follow most courts, including in this district, and find
8 that Ms. Sadeqi is entitled to due process protections beyond those provided by statute.

9 **B. The Fifth Amendment Applies to “All Persons,” Including Ms. Sadeqi**

10 The Fifth Amendment’s Due Process Clause applies to “all persons” within the
11 United States. This protection is not contingent on immigration status or the “entry
12 fiction.” Petitioner’s liberty interest in freedom from physical restraint is profound and
13 protected. Zadvydas v. Davis, 533 U.S. 678, 690 (2001); Singh v. Holder, 638 F.3d 1196,
14 1203 (9th Cir. 2011).
15

16 The Supreme court has long been solicitous of the constitutional rights of
17 noncitizens. Yick Wo v. Hopkins, 118 U.S. 356, 369 (1886) (“The fourteenth amendment
18 to the constitution is not confined to the protection of citizens.”). Both “removable and
19 inadmissible aliens are entitled to be free from detention that is arbitrary or capricious.”
20 Zadvydas at 721.
21

22
23 ² The Court held that the Attorney General’s continued exclusion of the alien without a hearing
24 does not amount to an unlawful detention, and courts may not temporarily admit him to the
United States pending arrangements for his departure abroad.

1 **C. Judicial Forum Required for Constitutional Claims**

2 Denying Ms. Sadeqi a forum to challenge her prolonged detention would raise a
3 “serious constitutional question” under Webster v. Doe, 486 U.S. 592, 603 (1988). As
4 Judge Sabraw recognized in Domingo-Ros v. Archambeault, No. 25-cv-1208-DMS-DEB,
5 2025 WL 27541, at *2 (S.D. Cal. May 18, 2025), statutes cannot be construed to deny
6 any judicial forum for a colorable constitutional claim. Petitioner’s claim that her
7 detention violates substantive due process is precisely such a claim.
8

9 **D. Ms. Sadeqi’s Detention Has Become “Unreasonably Prolonged,” Which**
10 **Without a Bond Hearing Violates Due Process**

11 Even before Jennings, many courts recognized detention became unreasonably
12 prolonged at six months. Applying the canon of “constitutional avoidance,” the Ninth
13 Circuit has ruled that “[a]s a general matter, detention is prolonged when it has lasted six
14 months and is expected to continue more than minimally beyond six months.” Diouf v.
15 Napolitano, 634 F. 3d 1081, 1092 (9th Cir. 2011). Specifically addressing mandatory
16 detention, the court found detention at six months was “prolonged” requiring an
17 “automatic individualized bond hearing[]” at which the government bore the burden of
18 persuasion as to why detention should continue. Rodriguez v. Robbins, 804 F.3d 1060
19 (9th Cr. 2015), *rev’d sub nom.* Jennings, 583 U.S. 281.
20

21 Other circuits had similarly adopted a six-month benchmark for when detention
22 becomes constitutionally problematic. In Lora v. Shanahan, 804 F.3d 601 (2nd Cir.
23 2015), *cert. granted, judgment vacated*, 583 U.S. 1165 (2018), the court observed that
24

1 “every other circuit to have considered this issue” determined that bond hearings were
2 required after six months. Lora v. Shanahan at 606. See also Ly v. Hansen, 351 F.3d 263,
3 275 (6th Cir. 2003). In 2018, in Jennings, the Supreme Court reversed the Rodriguez
4 holding that automatic bond hearings are mandated every six months as a matter of
5 constitutional avoidance. But the Court left open the application of due process as *applied*
6 in specific cases.
7

8 As a judge in this district assessed, “Jennings did not determine the constitutional
9 question at issue here—whether arriving aliens subject to prolonged detention under 8
10 U.S.C § 1225(b) are entitled to a bond hearing as a matter of due process.” Kydyrali, 499
11 F. Supp. 3d at 772 (citing Jennings, 138 S. Ct. at 851); see also German Santos v. Warden
12 Pike Cnty. Corr. Facility, 965 F.3d 203, 210 (3d Cir. 2020)(“Jennings ... left our
13 framework for assessing as-applied constitutional challenges intact”).
14

15 Therefore, Ms. Sadeqi’s prolonged detention without an individualized bond
16 hearing violates substantive due process. This Court must apply the Kydyrali factors
17 (recently applied by Judge Huie in *Mingzhi Gao*).

18 The Kydyrali factors favor the release of the Ms. Sadeqi as follows:

19 *Duration of Detention*

20 First, Ms. Sadeqi has been detained since December 1, 2025. This is an
21 “unreasonably prolonged” period and the lack of any individualized assessment or
22
23
24

1 prospect for release makes the detention inherently punitive and unconstitutional under
2 Mathews v. Eldridge, 424 U.S. 319 (1976).

3 *Government's Interest*

4 Second, the government's interest is minimal. Respondents make no allegation of
5 danger to the community or flight risk. They offer no justification beyond the bare
6 assertion of mandatory detention. Policy quotas or administrative convenience are
7 insufficient interests to override liberty interests. (Hernandez v. Sessions, 872 F.3d 976,
8 996 (9th Cir. 2017) - noting staggering detention costs). Indeed, there is no evidence that
9 Ms. Sadeqi has done anything to delay her case. Ms. Sadeqi's continued merits hearing is
10 December 2, 2025. Assuming that on that date the IJ reaches a decision, if the IJ grants
11 asylum, it is likely that the government will appeal the decision, and if the IJ denies the
12 application, Ms. Sadeqi will appeal. Thus, the IJ's decision will not be administratively
13 final and she will remain subject to Section 1225(b)(1)(B)(ii).
14
15

16 *Petitioner's Liberty Interest & Risk of Error*

17 Ms. Sadeqi has a profound liberty interest in freedom from physical restraint
18 (Morrissey v. Brewer, 408 U.S. 471 (1972)). The risk of erroneous deprivation is high
19 without an individualized hearing. There is no sign that she is a danger to the community
20 or a flight risk.
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1 *Fiscal/Administrative Burden*

2 The burden of releasing Ms. Sadeqi is nil and the burden of providing a bond
3 hearing is negligible compared to the substantial cost of detention (\$158/day/detainee)
4 and the constitutional imperative. Release is fiscally prudent and administratively simple.
5

6 Finally, under Mathews, the balance of factors tips sharply in favor of – at a
7 minimum – requiring an individualized bond hearing to assess Ms. Sadeqi’s flight risk
8 and dangerousness. The government’s bare reliance on a statutory classification (even if
9 applicable) cannot substitute for the individualized determination required by due process
10 before depriving a person of liberty for a significant period. (Kydryali, 499 F. Supp. 3d at
11 772; Banda v. McAleenan, 385 F. Supp. 3d 1099, 1106 (W.D. Wash. 2019)).
12

13 *Duration of Detention / Likelihood of Final Order of Removal*

14 Ms. Sadeqi has been detained since December 1, 2024. In addition to this being an
15 “unreasonably prolonged” period, the lack of any individualized assessment or prospect
16 for release makes the detention inherently punitive and unconstitutional under Mathews.

17 As mentioned above, Ms. Sadeqi’s continued merits hearing is December 2, 2025.

18 Assuming that on that date the IJ reaches a decision, if the IJ grants asylum, it is likely
19 that the government will appeal the decision, and if the IJ denies the application, Ms.

20 Sadeqi will appeal. Thus, the IJ’s decision will not be administratively final and she will
21 remain subject to Section 1225(b)(1)(B)(ii).
22
23
24

1 **E. Ms. Sadeqi Has a Protected Liberty Interest and the *Mathews v. Eldridge***
2 **Balancing Test Tips in her Favor**

3 Under the test set forth in Mathews, this Court must consider the following three
4 factors: “first, the private interest that will be affected by the official action; second, the
5 risk of an erroneous deprivation of such interest through the procedures used, and the
6 probative value, if any, of additional or substitute procedural safeguards; and finally the
7 government’s interest, including the function involved and the fiscal and administrative
8 burdens that the additional or substitute procedural requirements would entail.” See
9 Mathews v. Eldridge, 424 U.S. 319, 335 (1976).
10

11 The Mathews factors all favor Ms. Sadeqi. The government’s interest in keeping
12 Ms. Sadeqi in detention is very low, and when weighed against her significant private
13 interest in her liberty, the scale tips sharply in favor of releasing Ms. Sadeqi from
14 custody. Moreover, detention cannot have a punitive purpose. Respondents cannot
15 plausibly assert an interest in continuing to detain Ms. Sadeqi after almost a year of
16 detention. There is no indication of Ms. Sadeqi being a danger to the community or a
17 flight risk.
18

19 The government’s interest in detaining Ms. Sadeqi is extremely low at best. That
20 ICE has a policy to make a minimum number of arrests each day under the new
21 administration does not constitute a valid increase in the government’s interest in
22 detaining her. Moreover, the “fiscal and administrative burdens” that release from
23 custody would provide are nil. In fact, release from custody is far less costly than keeping
24

1 Ms. Sadeqi detained. As the Ninth Circuit noted in 2017, which remains even more true
2 today, “[t]he costs to the public of immigration detention are ‘staggering’: \$158 each day
3 per detainee, amounting to a total daily cost of \$6.5 million.” Hernandez v. Session, 872
4 F.3d 976, 996 (9th Cir. 2017).

5
6 **F. The Petition Meets All Habeas Rule 2(c) Requirement**

- 7 • Rule 2(c) Compliance: Petition "specifies all the grounds for relief" and "states the
8 facts supporting each ground."
- 9 • Specific Factual Allegations:
- 10 ○ Detention duration: Over 12 months as of December 2025
 - 11 ○ No individualized assessment of flight risk or danger to community.
 - 12 ○ Transfer to Arizona facility denied counsel access prior to July 8, 2025
13 hearing.
 - 14 ○ Government delays: Case reassigned to different IJ, multiple continuances.

15 Dated: November 7, 2025,

16 By: /s/ Bashir Ghazialam
17 Bashir Ghazialam
18 Attorney for Petitioner
19 Email: bg@lobg.net
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22
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24

CERTIFICATE OF SERVICE

I hereby certify that on December 7, 2025, I caused the foregoing document to be electronically filed with the Clerk of the Court for the United States District Court for the Southern District of California by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

Executed on: November 7, 2025

/s/ Bashir Ghazialam
Bashir Ghazialam