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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 HASHMAT FAIZI,

12 Petitioner-Plaintiff,

13 v.

14 CHRISTOPHER J. LAROSE, et al.

15 Respondents-Defendants.

Case No.: 3:25-cv-02974-JO-MSB

**PETITIONER'S SUPPLEMENTAL
BRIEFING IN SUPPORT OF
PETITION FOR WRIT OF HABEAS
CORPUS**

1 **A. Faizi's Claims are not Barred by 8 U.S.C. § 1252**

2 Any contention by Respondents that 1252(g) bars the court's jurisdiction over
3 Faizi's detention—a core habeas claim—is not a serious argument. Section 1252(g)
4 cannot bar review of immigration detention because detention challenges are classic,
5 “core” habeas claims that do not arise from the three discrete discretionary actions
6 covered by § 1252(g)—the decision or action to commence proceedings, adjudicate
7 cases, or execute removal orders—and reading § 1252(g) to foreclose habeas for
8 detention would raise serious Suspension Clause concerns avoided by settled
9 precedent. Reno v. Am.-Arab Anti-Discrimination Comm., 525 U.S. 471, 482–87 (1999).
10 The Supreme Court and courts of appeals have repeatedly exercised § 2241 jurisdiction
11 over civil immigration detention claims after IIRIRA and the REAL ID Act, confirming
12 that such claims are not barred by § 1252(g) and are properly cognizable in habeas.
13

14 **B. Faizi's Classification as an “Arriving Alien” and Subjection to 8 U.S.C. §**
15 **1225(b)(1) Notwithstanding, He Has Due Process Rights Beyond Those That**
16 **Congress Has Provided, and *Thuraissigiam* Does Not Bar Substantive Due**
17 **Process Claims**

18 Petitioners expects Respondents to argue that under the Supreme Court's decision
19 in Department of Homeland Security v. Thuraissigiam, 591 U.S. 103 (2020), Petitioner as
20 an “arriving alien” has no due process rights beyond those that Congress has provided. In
21 Thuraissigiam, the Supreme Court rejected a habeas petitioner's argument that the due
22 process clause conferred rights to challenge his order of expedited removal beyond those
23 established by Congress, stating that “an alien at the threshold of initial entry cannot
24

1 claim any greater rights under the Due Process Clause." 591 U.S. at 107. The petitioner in
2 that case had "attempted to enter the country illegally and was apprehended just 25 yards
3 from the border." Id.

4 The Supreme Court determined that the "political department of the government"
5 had plenary authority to admit or exclude aliens seeking initial entry, and thus "an alien
6 in respondent's position has only those rights regarding admission that Congress has
7 provided by statute." Id. at 139-40. Respondents will argue that because Faizi is an
8 "arriving alien," due process provides him nothing beyond the mandatory detention
9 scheme established by Section 1225(b)(1).
10

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

7
8 Recently, this Court applied the same reasoning as the majority majority of courts,
9 holding that a petitioner detained under Section 1225(b)(1) may assert a due process
10 challenge to prolonged mandatory detention. Mingzhi Gao v. Larose, No. 25-cv-2084-
11 RSH-SBC, 2025 WL 495253, at *4 (S.D. Cal. Sep. 26, 2025).

12
13 There, this Court agreed with the majority position that a petitioner detained under
14 Section 1225(b)(1) may assert a due process challenge to prolonged mandatory detention
15 without a bond hearing. It agreed with those district courts that interpret Thuraissigiam as
16 circumscribing an arriving alien's due process rights to admission, rather than limiting
17 that person's ability to challenge detention. See A.L. v. Oddo, 761 F. Supp. 3d 822, 825
18 (W.D. Pa. 2025) ("Nowhere in [Thuraissigiam] did the Supreme Court suggest that
19 arriving aliens being held under § 1225(b) may be held indefinitely and unreasonably
20 with no due process implications, nor that such aliens have no due process rights
21 whatsoever."); Hernandez v. Wofford, No. 25-cv-986-KES-CDB (HC), 2025 WL
22 2420390, at *3 (E.D. Cal. Aug. 21, 2025) ("Although the Supreme Court has described
23
24

1 Congress's power over the 'policies and rules for exclusion of aliens' as 'plenary,' and held
2 that this court must generally 'defer to Executive and Legislative Branch decision-making
3 in that area,' it is well-established that the Due Process Clause stands as a significant
4 constraint on the manner in which the political branches may exercise their plenary
5 authority'—through detention or otherwise.") (citations omitted); Padilla v. ICE, 704 F.
6 Supp. 3d 1163, 1171-72 (W.D. Wash. 2023) ("The holding in Thuraissigiam does not
7 foreclose Plaintiffs' due process claims which seek to vindicate a right to a bond hearing
8 with certain procedural protections.").

10 Lastly, Mezei² also does not help the government as the government does not
11 contend that this case involves particularized national security risks or emergency
12 regulations, as in Mezei, 345 U.S. at 214-16. See Jennings v. Rodriguez, 583 U.S. 281,
13 340 (2018) (Breyer, J., dissenting); Jean v. Nelson, 472 U.S. 846, 872 (1985) (Marshall,
14 J., dissenting); Mezei, 345 U.S. at 217 (Black, J., dissenting).

16 Therefore, this court should follow most courts, including in this district, and find that
17 Faizi is entitled to due process protections beyond those provided by statute.

18 **C. The Fifth Amendment Applies to "All Persons," Including Faizi**

19 The Fifth Amendment's Due Process Clause applies to "all persons" within the
20 United States. This protection is not contingent on immigration status or the "entry
21

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

1 fiction.” Faizi’s liberty interest in freedom from physical restraint is profound and
2 protected. Zadvydas v. Davis, 533 U.S. 678, 690 (2001); Singh v. Holder, 638 F.3d 1196,
3 1203 (9th Cir. 2011).

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

10 **D. Judicial Forum Required for Constitutional Claims**

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

18 **E. Faizi’s Detention Has Become “Unreasonably Prolonged” Which Without a 19 Bond Hearing Violates Due Process**

20 Even before Jennings, many courts recognized detention became unreasonably
21 prolonged at six months. Applying the canon of “constitutional avoidance,” the Ninth
22 Circuit has ruled that “[a]s a general matter, detention is prolonged when it has lasted six
23 months and is expected to continue more than minimally beyond six months.” Diouf v.
24

1 Napolitano, 634 F. 3d 1081, 1092 (9th Cir. 2011). Specifically addressing mandatory
2 detention, the court found detention at six months was “prolonged” requiring an
3 “automatic individualized bond hearing[]” at which the government bore the burden of
4 persuasion as to why detention should continue. Rodriguez v. Robbins, 804 F.3d 1060
5 (9th Cr. 2015), *rev’d sub nom.* Jennings v. Rodriguez, 583 U.S. 281 (2018).

6
7 Other circuits had similarly adopted a six-month benchmark for when detention
8 becomes constitutionally problematic. In Lora v. Shanahan, 804 F.3d 601 (2nd Cir.
9 2015), *cert. granted, judgment vacated*, 583 U.S. 1165 (2018), the court observed that
10 “every other circuit to have considered this issue” determined that bond hearings were
11 required after six months. Lora v. Shanahan at 606. See also Ly v. Hansen, 351 F.3d 263,
12 275 (6th Cir. 2003). In 2018, in Jennings, the Supreme Court reversed the Rodriguez
13 holding that automatic bond hearings are mandated every six months as a matter of
14 constitutional avoidance. But the Court left open the application of due process as *applied*
15 in specific cases.
16

17 As a judge in this district assessed, “Jennings did not determine the constitutional
18 question at issue here—whether arriving aliens subject to prolonged detention under 8
19 U.S.C § 1225(b) are entitled to a bond hearing as a matter of due process.” Kydyrali, 499
20 F. Supp. 3d at 772 (citing Jennings, 138 S. Ct. at 851); see also German Santos v. Warden
21 Pike Cnty. Corr. Facility, 965 F.3d 203, 210 (3d Cir. 2020)(“Jennings ... left our
22 framework for assessing as-applied constitutional challenges intact”).
23
24

1 Therefore, Faizi's prolonged detention without an individualized bond hearing
2 violates substantive due process. This Court must apply the Kydyrali factors (recently
3 applied by Judge Huie in *Mingzhi Gao*).

4 The Kydyrali factors favor the release of the Faizi as follows:

5 *Duration of Detention*

6
7 First, Faizi has been detained since December 26, 2024. This is an "unreasonably
8 prolonged" period and the lack of any individualized assessment or prospect for release
9 makes the detention inherently punitive and unconstitutional under Mathews v. Eldridge,
10 424 U.S. 319 (1976).

11 *Government's Interest*

12 Second, the government's interest is minimal. Respondents make no allegation of
13 danger to the community or flight risk. They offer no justification beyond the bare
14 assertion of mandatory detention. Policy quotas or administrative convenience are
15 insufficient interests to override liberty interests. (Hernandez v. Sessions, 872 F.3d 976,
16 996 (9th Cir. 2017) - noting staggering detention costs). Indeed, there is no evidence that
17 Faizi has done anything to delay his case. Faizi's continued merits hearing is December
18 19, 2025. Assuming that on that date the IJ reaches a decision, if the IJ grants asylum, it
19 is likely that the government will appeal the decision, and if the IJ denies the application,
20 Faizi will appeal. Thus, the IJ's decision will not be administratively final and he will
21 remain subject to Section 1225(b)(1)(B)(ii).
22
23
24

Petitioner's Liberty Interest & Risk of Error

Faizi has a profound liberty interest in freedom from physical restraint (Morrissey v. Brewer, 408 U.S. 471 (1972)). The risk of erroneous deprivation is high without an individualized hearing. There is no sign that he is a danger to the community or a flight risk.

Fiscal/Administrative Burden

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

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

Duration of Detention / Likelihood of Final Order of Removal

Faizi has been detained since December 26, 2024. In addition to this being an "unreasonably prolonged" period, the lack of any individualized assessment or prospect for release makes the detention inherently punitive and unconstitutional under Mathews, 424 U.S. 319 (1976). As mentioned above, Faizi's continued merits hearing is December

1 19, 2025. Assuming that on that date the IJ reaches a decision, if the IJ grants asylum, it
2 is likely that the government will appeal the decision, and if the IJ denies the application,
3 Faizi will appeal. Thus, the IJ's decision will not be administratively final and he will
4 remain subject to Section 1225(b)(1)(B)(ii).

5
6 **F. Faizi Has a Protected Liberty Interest and the *Mathews v. Eldridge* Balancing Test Tips in his Favor**

7 Under the test set forth in Mathews, this Court must consider the following three
8 factors: "first, the private interest that will be affected by the official action; second, the
9 risk of an erroneous deprivation of such interest through the procedures used, and the
10 probative value, if any, of additional or substitute procedural safeguards; and finally the
11 government's interest, including the function involved and the fiscal and administrative
12 burdens that the additional or substitute procedural requirements would entail." See
13 Mathews v. Eldridge, 424 U.S. 319, 335 (1976).
14

15 The Mathews factors all favor Faizi. The government's interest in keeping Faizi in
16 detention is very low, and when weighed against his significant private interest in his
17 liberty, the scale tips sharply in favor of releasing him from custody. Moreover, detention
18 cannot have a punitive purpose. Respondents cannot plausibly assert an interest in
19 continuing to detain Faizi after almost a year of detention. There is no indication of Faizi
20 being a danger to the community or a flight risk.
21

22 The government's interest in detaining Faizi is extremely low at best. That ICE has
23 a policy to make a minimum number of arrests each day under the new administration
24

1 does not constitute a valid increase in the government's interest in detaining him.

2 Moreover, the "fiscal and administrative burdens" that release from custody would
3 provide are nil. In fact, release from custody is far less costly than keeping Faizi detained.
4 As the Ninth Circuit noted in 2017, which remains even more true today, "[t]he costs to
5 the public of immigration detention are 'staggering': \$158 each day per detainee,
6 amounting to a total daily cost of \$6.5 million." Hernandez v. Session, 872 F.3d 976, 996
7 (9th Cir. 2017).

9 **G. The Petition Meets All Habeas Rule 2(c) Requirement**

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

18 Dated: November 7, 2025,

19 By: /s/ Bashir Ghazialam
20 Bashir Ghazialam
21 Attorney for Petitioner
22 Email: bg@lobg.net
23
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