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11 UNITED STATES DISTRICT COURT
12 SOUTHERN DISTRICT OF CALIFORNIA

13 MAHDI ELIKAEI,
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15 Petitioner-Plaintiff,
16
17 v.
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19 CHRISTOPHER J. LAROSE, et al.
20
21 Respondents-Defendants.

Case No.: 3:25-cv-03219-DMS-AHG

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

1 **A. Elikaei Completed Compulsory Military Service in Iran Years Prior to**
2 **IRGC’s Designation as a “Tier I” Foreign Terrorist Organization (FTO)**

3 In their Opposition, the government represents to the Court that Petitioner “served
4 as a lieutenant in the Islamic Revolutionary Guard Corps (“IRGC”)” (Dkt. 8 at 10), and
5 that “on April 15, 2019, the State Department formally designated the IRGC a “Tier I”
6 Foreign Terrorist Organization (“FTO”) under 8 U.S.C. § 1189.” Id. However, the
7 government conveniently fails to mention that Petitioner was subject to and completed
8 compulsory military service years as a conscript prior to IRGC’s designation as a Tier I
9 FTO, served (as lieutenant III¹) the minimum mandatory 21-month period, and he had no
10 choice or control over being assigned to the IRGC. See Exhibits 1-5 to Declaration of
11 Bashir Ghazialam (1. Petitioner’s declaration, 2. Certificate of Discharge from Military
12 Service, 3. Letter by Iranian Attorney Masoumeh Ramezanzadeh re Provision of Official
13 Information Regarding the Compulsory Military Service Laws in the Islamic Republic of
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17 ¹ See Exhibits 2 (Certificate of Discharge from Military Service) and 4 (Iranian-Canadian
18 Conscripts’ Rights Association Report, “Conscripts in Iran”) (also found at
<https://www.fcica.ca/conscription-in-iran>)

19 “2. Conscripts ranks:

- 20 1. Conscripts receive assigned ranks based on their education. During their service,
a conscript’s rank normally does not change.
21 2. The highest rank assigned to a conscript is changed multiple times in the last
decades but generally the highest rank assigned to the Doctors, PhDs, Masters and
22 equal is “First Lieutenant”. Bachelors and equal receive “Second Lieutenant”.
College and equal degrees would receive “Third Lieutenant” rank. High school
23 diploma and others would receive “Private” to “Sergeant” ranks. These rules
changed multiple times but it is almost the same as above.”
24

1 Iran, 4. CIA.GOV – The World Factbook – Iran, 5. Iranian-Canadian Conscripts’ Rights
2 Association Report, “Conscripts in Iran”).

3 Respondents further fail to mention that Petitioner performed his mandatory
4 military service after completing his master’s degree and that he did not receive any
5 military training during his service period and is not familiar with military affairs. Ex. 1.
6 Respondents also fail to mention to the Court that during his military service, Petitioner
7 was sent to Baqiyatallah University of Medical Sciences/Baqiyatallah Hospital due to his
8 proficiency in English and familiarity with the field of psychology. He served in the
9 psychiatric ward of the hospital. His duties during his 21-month military service included
10 translation, editing, information gathering, and research in the field of psychology. He
11 spent 9 months in the hospital archives reading the files of patients admitted to the
12 psychiatric ward. After analyzing the information extracted from the files, he wrote a
13 scientific article that was published in an American quarterly. Id. Ex. 1).

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16 Petitioner was finally forced to flee Iran due to persecution by the same regime due
17 to his political opinions and his conversion to Christianity. Id.

18 **B. Elikaei’s Classification as an “Arriving Alien” and Subjection to 8 U.S.C. §**
19 **1225(b)(1) Notwithstanding, He Has Due Process Rights Beyond Those That**
20 **Congress Has Provided, and *Thuraissigiam* Does Not Bar Substantive Due**
21 **Process Claims**

22 Respondents argue that under the Supreme Court's decision in Department of
23 Homeland Security v. Thuraissigiam, 591 U.S. 103 (2020), Petitioner as an "arriving
24 alien" has no due process rights beyond those that Congress has provided. In

1 Thuraissigiam, the Supreme Court rejected a habeas petitioner's argument that the due
2 process clause conferred rights to challenge his order of expedited removal beyond those
3 established by Congress, stating that "an alien at the threshold of initial entry cannot
4 claim any greater rights under the Due Process Clause." 591 U.S. at 107. The petitioner in
5 that case had "attempted to enter the country illegally and was apprehended just 25 yards
6 from the border." Id. The Supreme Court determined that the "political department of the
7 government" had plenary authority to admit or exclude aliens seeking initial entry, and
8 thus "an alien in respondent's position has only those rights regarding admission that
9 Congress has provided by statute." Id. at 139-40. Respondents argue that because Elikaei
10 is an "arriving alien," due process provides him nothing beyond the mandatory detention
11 scheme established by Section 1225(b)(1).
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14 Although following the Supreme Court's decision in Thuraissigiam, some district
15 courts have adopted the reasoning to dismiss or deny habeas petitions in the context of
16 arriving aliens subject to mandatory detention under Section 1225(b)(1)², however, most
17 courts have ruled otherwise. See Abdul-Samed v. Warden of Golden State Annex Det.
18 Facility, No. 25-cv-98-SAB-HC, 2025 WL 2099343, at *6 (E.D. Cal. July 25, 2025)
19 ("Although the Ninth Circuit has yet to take a position on whether due process requires a
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22 ² 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 bond hearing for noncitizens detained under 8 U.S.C. § 1225(b) 'essentially all district
2 courts that have considered the issue agree that prolonged mandatory detention pending
3 removal proceedings, without a bond hearing, will—at some point—violate the right to
4 due process.'" (citing Martinez v. Clark, No. C18-1669-RAJ-MAT, 2019 WL 5968089,
5 at *6 (W.D. Wash. May 23, 2019)); Kydyrali v. Wolf, 499 F. Supp. 3d 768, 772 (S.D.
6 Cal. 2020) ("[T]he Court joins the majority of courts across the country in concluding
7 that an unreasonably prolonged detention under 8 U.S.C. § 1225(b) without an
8 individualized bond hearing violates due process.").

9
10 Recently, this Court has applied the same reasoning as the majority of courts,
11 holding that a petitioners detained under Section 1225(b)(1) may assert a due process
12 challenge to prolonged mandatory detention. Mingzhi Gao v. Larose, No. 25-cv-2084-
13 RSH-SBC, 2025 WL 495253, at *4 (S.D. Cal. Sep. 26, 2025); Sadeqi v. Larose, No. 25-
14 cv-2587-RSH-BJW, (S.D. Cal. Nov. 12, 2025); Faizi v. Larose, No. 25-cv-2974-JO-
15 MSB, (S.D. Cal. Nov. 13, 2025)

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

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15 Lastly, Mezei³ also does not help the government as contrary to the government's
16 attempt to paint Petitioner as a national security risk, this case does not involve
17 particularized national security risks or emergency regulations, as in Mezei, 345 U.S. at
18 214-16. See Jennings v. Rodriguez, 583 U.S. 281, 340 (2018) (Breyer, J.,
19 dissenting); Jean v. Nelson, 472 U.S. 846, 872 (1985) (Marshall, J., dissenting); Mezei,
20 345 U.S. at 217 (Black, J., dissenting). Other than refencing Petitioner's mandatory
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23 ³ The Court held that the Attorney General continued exclusion of the alien without a
24 hearing 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 military service as described above, the government fails to articulate any particularized
2 national security risks that Petitioner may pose.

3 Therefore, this Court should follow most courts, including in this district, and find
4 that Elikaei is entitled to due process protections beyond those provided by statute.

5
6 **C. The Fifth Amendment Applies to “All Persons,” Including Elikaei**

7 The Fifth Amendment’s Due Process Clause applies to “all persons” within the
8 United States. This protection is not contingent on immigration status or the “entry
9 fiction.” Elikaei’s liberty interest in freedom from physical restraint is profound and
10 protected. Zadvydus v. Davis, 533 U.S. 678, 690 (2001); Singh v. Holder, 638 F.3d 1196,
11 1203 (9th Cir. 2011). The Supreme Court has long been solicitous of the constitutional
12 rights of noncitizens. Yick Wo v. Hopkins, 118 U.S. 356, 369 (1886) (“The fourteenth
13 amendment to the constitution is not confined to the protection of citizens.”). Both
14 “removable and inadmissible aliens are entitled to be free from detention that is arbitrary
15 or capricious.” Zadvydus at 721.

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

18 Denying Elikaei a forum to challenge his prolonged detention would raise a
19 “serious constitutional question” under Webster v. Doe, 486 U.S. 592, 603 (1988). As
20 Judge Sabraw recognized in Domingo-Ros v. Archambeault, No. 25-cv-1208-DMS-DEB,
21 2025 WL 27541, at *2 (S.D. Cal. May 18, 2025), statutes cannot be construed to deny
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1 any judicial forum for a colorable constitutional claim. Elikaei’s claim that his detention
2 violates substantive due process is precisely such a claim.

3 **E. Elikaei’s Detention Has Become “Unreasonably Prolonged” Which Without a**
4 **Bond Hearing Violates Due Process**

5 Even before Jennings, many courts recognized detention became unreasonably
6 prolonged at six months. Applying the canon of “constitutional avoidance,” the Ninth
7 Circuit has ruled that “[a]s a general matter, detention is prolonged when it has lasted six
8 months and is expected to continue more than minimally beyond six months.” Diouf v.
9 Napolitano, 634 F. 3d 1081, 1092 (9th Cir. 2011). Specifically addressing mandatory
10 detention, the court found detention at six months was “prolonged” requiring an
11 “automatic individualized bond hearing[.]” at which the government bore the burden of
12 persuasion as to why detention should continue. Rodriguez v. Robbins, 804 F.3d 1060
13 (9th Cr. 2015), *rev’d sub nom.* Jennings v. Rodriguez, 583 U.S. 281 (2018).

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15 Other circuits had similarly adopted a six-month benchmark for when detention
16 becomes constitutionally problematic. In Lora v. Shanahan, 804 F.3d 601 (2nd Cir.
17 2015), *cert. granted, judgment vacated*, 583 U.S. 1165 (2018), the court observed that
18 “every other circuit to have considered this issue” determined that bond hearings were
19 required after six months. Lora v. Shanahan at 606. See also Ly v. Hansen, 351 F.3d 263,
20 275 (6th Cir. 2003). In 2018, in Jennings, the Court reversed the Rodriguez holding that
21 automatic bond hearings are mandated every six months as a matter of constitutional
22 avoidance. But it left open the application of due process as *applied* in specific cases.
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1 As a judge in this district assessed, “Jennings did not determine the constitutional
2 question at issue here—whether arriving aliens subject to prolonged detention under 8
3 U.S.C § 1225(b) are entitled to a bond hearing as a matter of due process.” Kydyrali, 499
4 F. Supp. 3d at 772 (citing Jennings, 138 S. Ct. at 851); see also German Santos v. Warden
5 Pike Cnty. Corr. Facility, 965 F.3d 203, 210 (3d Cir. 2020)(“Jennings ... left our
6 framework for assessing as-applied constitutional challenges intact”).
7

8 Therefore, Elikaei’s prolonged detention without an individualized bond hearing
9 violates substantive due process. This Court should apply the Kydyrali factors (recently
10 applied by Judge Huie in *Mingzhi Gao*).

11 The Kydyrali factors favor the release of the Elikaei as follows:

12 *Duration of Detention*

13 First, Elikaei has been detained since January 1, 2025. This is an “unreasonably
14 prolonged” period and the lack of any individualized assessment or prospect for release
15 makes the detention inherently punitive and unconstitutional under Mathews v. Eldridge,
16 424 U.S. 319 (1976).
17

18 *Government’s Interest*

19 Second, the government’s interest is minimal. Respondents make no showing of
20 any particularized danger to the community or flight risk. They offer no justification
21 beyond the bare assertion of mandatory detention. Policy quotas or administrative
22 convenience are insufficient interests to override liberty interests. (Hernandez v.
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1 Sessions, 872 F.3d 976, 996 (9th Cir. 2017) - noting staggering detention costs). Indeed,
2 there is no evidence that Elikaei has done anything to delay his case. Elikaei's hearings
3 were rescheduled on multiple occasions by the court without his request. The IJ refused
4 to provide him with a full merits hearing and pretermitted his application and ordered him
5 removed. Elikaei timely appealed which is pending. The IJ's decision will not be
6 administratively final and in the event the appeal is dismissed, he has a right to petition
7 before the Ninth Circuit Court of Appeals.

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

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

15 *Fiscal/Administrative Burden*

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

19 Finally, under Mathews, the balance of factors tips sharply in favor of – at a
20 minimum – requiring an individualized bond hearing to assess Elikaei's flight risk and
21 dangerousness. The government's bare reliance on a statutory classification (even if
22 applicable) cannot substitute for the individualized determination required by due process
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1 before depriving a person of liberty for a significant period. (*Kydryali*, 499 F. Supp. 3d at
2 772; *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1106 (W.D. Wash. 2019)).

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

4 Elikaei has been detained since January 1, 2025. In addition to this being an
5 “unreasonably prolonged” period, the lack of any individualized assessment or prospect
6 for release makes the detention inherently punitive and unconstitutional under Mathews,
7 424 U.S. 319 (1976). As mentioned above, Elikaei’s appeal to the BIA is pending.

8 Assuming that the BIA affirms the IJ’s decision, Elikaei will petition to the Ninth Circuit.

9
10 **F. Elikaei Has a Protected Liberty Interest and the *Mathews v. Eldridge***
11 **Balancing Test Tips in his Favor**

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

19
20 The Mathews factors all favor Elikaei. The government’s interest in keeping
21 Elikaei in detention is very low, and when weighed against his significant private interest
22 in his liberty, the scale tips sharply in favor of releasing him from custody. Moreover,
23 detention cannot have a punitive purpose. Respondents cannot plausibly assert an interest
24

1 in continuing to detain Elikaei after almost a year of detention. There is no indication of
2 Elikaei being a danger to the community or a flight risk.

3 The government's interest in detaining Elikaei is extremely low at best. That ICE
4 has a policy to make a minimum number of arrests each day under the new
5 administration does not constitute a valid increase in the government's interest in
6 detaining him. Moreover, the "fiscal and administrative burdens" that release from
7 custody would provide are nil. In fact, release from custody is far less costly than keeping
8 Elikaei detained. As the Ninth Circuit noted in 2017, which remains even more true
9 today, "[t]he costs to the public of immigration detention are 'staggering': \$158 each day
10 per detainee, amounting to a total daily cost of \$6.5 million." Hernandez v. Session, 872
11 F.3d 976, 996 (9th Cir. 2017).

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

- 15 • Rule 2(c) Compliance: Petition "specifies all the grounds for relief" and "states the
16 facts supporting each ground."
- 17 • Specific Factual Allegations:
 - 18 ○ Detention duration: 12 months as of January 1, 2026.
 - 19 ○ No individualized assessment of flight risk or danger to community.
 - 20 ○ Government delays: Case reassigned to different immigration judges,
21 multiple continuances.

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Dated: December 9, 2025,

By: /s/ Bashir Ghazialam
Bashir Ghazialam
Attorney for Petitioner
Email: bg@lobg.net

CERTIFICATE OF SERVICE

I hereby certify that on December 9, 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: December 9, 2025

/s/ Bashir Ghazialam
Bashir Ghazialam

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