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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

MAHDI ELIKAEI,

Petitioner-Plaintiff,

v.

CHRISTOPHER J. LAROSE, et al.

Respondents-Defendants.

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

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

A. Elikaei Completed Compulsory Military Service in Iran Years Prior to IRGC's Designation as a "Tier I" Foreign Terrorist Organization (FTO)

In their Opposition, the government represents to the Court that Petitioner "served as a lieutenant in the Islamic Revolutionary Guard Corps ("IRGC")" (Dkt. 8 at 10), and that "on April 15, 2019, the State Department formally designated the IRGC a "Tier I" Foreign Terrorist Organization ("FTO") under 8 U.S.C. § 1189." Id. However, the government conveniently fails to mention that Petitioner was subject to and completed compulsory military service years as a conscript prior to IRGC's designation as a Tier I FTO, served (as lieutenant III[1]) the minimum mandatory 21-month period, and he had no choice or control over being assigned to the IRGC. See Exhibits 1-5 to Declaration of Bashir Ghazialam (1. Petitioner's declaration, 2. Certificate of Discharge from Military Service, 3. Letter by Iranian Attorney Masoumeh Ramezanzadeh re Provision of Official Information Regarding the Compulsory Military Service Laws in the Islamic Republic of

[1] See Exhibits 2 (Certificate of Discharge from Military Service) and 4 (Iranian-Canadian Conscripts' Rights Association Report, "Conscripts in Iran") (also found at https://www.fcica.ca/conscription-in-iran)
"2. Conscripts ranks:
1. Conscripts receive assigned ranks based on their education. During their service, a conscript's rank normally does not change.
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 equal is "First Lieutenant". Bachelors and equal receive "Second Lieutenant". College and equal degrees would receive "Third Lieutenant" rank. High school diploma and others would receive "Private" to "Sergeant" ranks. These rules changed multiple times but it is almost the same as above."

Iran, 4. CIA.GOV – The World Factbook – Iran, 5. Iranian-Canadian Conscripts' Rights Association Report, "Conscripts in Iran").

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

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

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

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

Thuraissigiam, the Supreme Court rejected a habeas petitioner's argument that the due process clause conferred rights to challenge his order of expedited removal beyond those established by Congress, stating that "an alien at the threshold of initial entry cannot claim any greater rights under the Due Process Clause." 591 U.S. at 107. The petitioner in that case had "attempted to enter the country illegally and was apprehended just 25 yards from the border." Id. The Supreme Court determined that the "political department of the government" had plenary authority to admit or exclude aliens seeking initial entry, and thus "an alien in respondent's position has only those rights regarding admission that Congress has provided by statute." Id. at 139-40. Respondents argue that because Elikaei is an "arriving alien," due process provides him nothing beyond the mandatory detention scheme established by Section 1225(b)(1).

Although following the Supreme Court's decision in Thuraissigiam, some district courts have adopted the reasoning to dismiss or deny habeas petitions in the context of arriving aliens subject to mandatory detention under Section 1225(b)(1)[2], however, most courts have ruled otherwise. See Abdul-Samed v. Warden of Golden State Annex Det. Facility, No. 25-cv-98-SAB-HC, 2025 WL 2099343, at *6 (E.D. Cal. July 25, 2025) ("Although the Ninth Circuit has yet to take a position on whether due process requires a

[2] E.g. Petgrave v. Aleman, 529 F. Supp. 3d 665, 669 (S.D. Tex. 2021) ("As far as Petitioner is concerned, whatever procedure Congress has authorized is sufficient due process."); 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.")

bond hearing for noncitizens detained under 8 U.S.C. § 1225(b) .... 'essentially all district courts that have considered the issue agree that prolonged mandatory detention pending removal proceedings, without a bond hearing, will—at some point—violate the right to due process.'") (citing Martinez v. Clark, No. C18-1669-RAJ-MAT, 2019 WL 5968089, at *6 (W.D. Wash. May 23, 2019)); Kydyrali v. Wolf, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020) ("[T]he Court joins the majority of courts across the country in concluding that an unreasonably prolonged detention under 8 U.S.C. § 1225(b) without an individualized bond hearing violates due process.").

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

There, this Court agreed with the majority position that a petitioner detained under Section 1225(b)(1) may assert a due process challenge to prolonged mandatory detention without a bond hearing. It agreed with those district courts that interpret Thuraissigiam as circumscribing an arriving alien's due process rights to admission, rather than limiting that person's ability to challenge detention. See A.L. v. Oddo, 761 F. Supp. 3d 822, 825 (W.D. Pa. 2025) ("Nowhere in [Thuraissigiam] 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."); Hernandez v. Wofford, No. 25-cv-986-KES-CDB (HC), 2025 WL 2420390, at *3 (E.D. Cal. Aug. 21, 2025) ("Although the Supreme Court has described Congress's power over the 'policies and rules for exclusion of aliens' as 'plenary,' and held that this court must generally 'defer to Executive and Legislative Branch decision-making in that area,' it is well-established that the Due Process Clause stands as a significant constraint on the manner in which the political branches may exercise their plenary authority'—through detention or otherwise.") (citations omitted); Padilla v. ICE, 704 F. Supp. 3d 1163, 1171-72 (W.D. Wash. 2023) ("The holding in Thuraissigiam does not foreclose Plaintiffs' due process claims which seek to vindicate a right to a bond hearing with certain procedural protections.").

Lastly, Mezei[3] also does not help the government as contrary to the government's attempt to paint Petitioner as a national security risk, this case does not involve particularized national security risks or emergency regulations, as in *Mezei*, 345 U.S. at 214-16. See Jennings v. Rodriguez, 583 U.S. 281, 340 (2018) (Breyer, J., dissenting); Jean v. Nelson, 472 U.S. 846, 872 (1985) (Marshall, J., dissenting); Mezei, 345 U.S. at 217 (Black, J., dissenting). Other than refencing Petitioner's mandatory

[3] The Court held that the Attorney General continued exclusion of the alien without a 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.

military service as described above, the government fails to articulate any particularized national security risks that Petitioner may pose.

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

C. The Fifth Amendment Applies to "All Persons," Including Elikaei

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

D. Judicial Forum Required for Constitutional Claims

Denying Elikaei a forum to challenge his prolonged detention would raise a "serious constitutional question" under Webster v. Doe, 486 U.S. 592, 603 (1988). As Judge Sabraw recognized in Domingo-Ros v. Archambeault, No. 25-cv-1208-DMS-DEB, 2025 WL 27541, at *2 (S.D. Cal. May 18, 2025), statutes cannot be construed to deny

any judicial forum for a colorable constitutional claim. Elikaei's claim that his detention violates substantive due process is precisely such a claim.

E. Elikaei's Detention Has Become "Unreasonably Prolonged" Which Without a Bond Hearing Violates Due Process

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

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

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

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

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

Duration of Detention

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

Government's Interest

Second, the government's interest is minimal. Respondents make no showing of any particularized danger to the community or flight risk. They offer no justification beyond the bare assertion of mandatory detention. Policy quotas or administrative convenience are insufficient interests to override liberty interests. (Hernandez v.

Sessions, 872 F.3d 976, 996 (9th Cir. 2017) - noting staggering detention costs). Indeed, there is no evidence that Elikaei has done anything to delay his case. Elikaei's hearings were rescheduled on multiple occasions by the court without his request. The IJ refused to provide him with a full merits hearing and pretermitted his application and ordered him removed. Elikaei timely appealed which is pending. The IJ's decision will not be administratively final and in the event the appeal is dismissed, he has a right to petition before the Ninth Circuit Court of Appeals.

Petitioner's Liberty Interest & Risk of Error

Elikaei 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 evidence that he is a danger to the community or a flight risk.

Fiscal/Administrative Burden

The burden of releasing Elikaei 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 Elikaei'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

Elikaei has been detained since January 1, 2025. 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, Elikaei's appeal to the BIA is pending. Assuming that the BIA affirms the IJ's decision, Elikaei will petition to the Ninth Circuit.

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

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

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

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

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

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

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

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Dated: December 9, 2025,

By: */s/ Bashir Ghazialam*
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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
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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

MAHDI ELIKAEI,

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v.

CHRISTOPHER J. LAROSE, Senior Warden, Otay Mesa Detention Center, San Diego, California, *et al.*,

Respondents.

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

JOINT STATUS REPORT

On December 10, 2025, the Court granted Petitioner Mahdi Elikaei's Petition for Writ of Habeas Corpus and ordered Respondents to "arrange an individualized bond hearing for Petitioner before an immigration court within fourteen (14) days." The Court also ordered the Parties "to file a Joint Status Report within twenty one (21) days of [the] Order's entry, confirming Petitioner received a bond hearing." Ord. at 3.

Respondents initially scheduled a bond hearing for Petitioner for December 18, 2025. At that hearing, the Immigration Judge recused herself at Petitioner's request. *See* Attachment A. At the rescheduled bond hearing on December 23, 2025, after full consideration of the evidence presented, the second Immigration Judge denied bond on the basis that the Department of Homeland Security had established that Petitioner is both a danger to the community and a flight risk. The Immigration Judge issued an oral decision which Petitioner submits did not include an on the record findings of fact and conclusions of law, and a form order, which, as a matter of course, did not include written findings of fact or conclusions of law. *See* Attachment B; *see also* EOIR Practice Manual Ch. § 9.3(e)(7) ("Usually, the Immigration Judge's decision is rendered orally. Because bond hearings are generally not recorded, the decision is not transcribed. If either party appeals, the Immigration Judge prepares a written decision based on notes from the hearing.").

Petitioner respectfully notifies this Court that he intends to file a post-judgment motion.

Dated: December 31, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on December 31, 2025, I filed this document with the Clerk of the Court through the CM/ECF system, which will provide electronic notice and an electronic link to this document to all counsel of record.

Respectfully submitted,

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