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

12 REGINA MARDIAN,  
13  
14 Petitioner,

15 v.

16 ALEJANDRO MAYORKAS, Secretary,  
17 Department of Homeland Security,  
18 CHRISTOPHER LAROSE, Warden,  
19 Otay Mesa Detention Center, TAE D.  
20 JOHNSON, Acting Director,  
21 Immigration and Customs Enforcement,  
22 and

23 Respondents.

CIVIL CASE NO.: 25-CV-3467-JLS

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

24 Regina Mardian’s petition explained that her mandatory detention under 8  
25 U.S.C. § 1225(b) without a bond hearing violates the Due Process Clause. The  
26 government now responds in a brief filled with irrelevant and legally erroneous  
27 arguments. Ms. Mardian is solely challenging her detention without a bond  
28 hearing, Doc. 7 at 11—she is not arguing that her conditions of confinement  
violate the Constitution or claiming that she is receiving unconstitutionally  
deficient psychiatric health care. She brought up her mental health condition only  
because it is tangentially relevant to her detention-based habeas claim in two  
respects: (1) It explains the nature of her board of immigration (“BIA”) appeal,  
and (2) it could bear marginally on one of the five factors (conditions of  
detention) that courts use to evaluate fitness for a bond hearing. Doc. 7 at 7–10.

1 The declaration that the government now submits from Ms. Mardian’s  
2 treating psychiatrist therefore has virtually nothing to do with the issues in this  
3 petition. Doc. 10-2. Dr. Kalhor’s declaration cannot bear on Ms. Mardian’s BIA  
4 appeal, because the declaration is not in the appellate record submitted to the BIA;  
5 it was created for this separate litigation. And even if this Court believed  
6 Dr. Kalhor that Ms. Mardian is “stable, happy, and without any noticeable  
7 [schizophrenia symptoms],” Doc. 10-2 at ¶ 5—a characterization that her family  
8 and a psychiatric evaluator vigorously dispute, Exh. A at ¶¶ 5–7; Exh. B—that  
9 would not give the government a right to detain her indefinitely without a bond  
10 hearing. Courts have found that jail-like conditions of confinement like those at  
11 Otay Mesa weigh in favor of bond, without any need to show that the detainee is  
12 receiving constitutionally inadequate psychiatric care. *Kydyrali v. Wolf*, 499 F.  
13 Supp. 3d 768, 773 (S.D. Cal. 2020); *Abdul Kadir v. Larose*, No. 25CV1045-LL-  
14 MMP, 2025 WL 2932654, at \*5 (S.D. Cal. Oct. 15, 2025).

15 Ultimately, then, the parties’ disputes about Ms. Mardian’s mental health  
16 will have little if any bearing on the right outcome in this case. Instead, this case  
17 will turn on how the three-to-five-factor due process test applies to Ms. Mardian’s  
18 prolonged detention. Because the government disputes almost none of those  
19 factors, and all weigh in Ms. Mardian’s favor, this Court must grant this petition.

20  
21 **I. Ms. Mardian does not challenge her conditions of confinement or deny**  
22 **that § 1225(b) mandates detention, making most of the government’s**  
23 **arguments irrelevant.**

24 Most of the government’s arguments in the Return are irrelevant to the claims  
25 raised in the petition.

26 First, Ms. Mardian does not raise a standalone conditions-of-confinement  
27 claim but exclusively challenges her detention. *Contra* Doc. 10 at 1–4. It is true that  
28 litigants may not seek habeas relief on the ground that they are suffering from  
constitutionally inadequate conditions of confinement. *See Pinson v. Carvajal*, 69

1 F.4th 1059, 1062 (9th Cir. 2023). But that is not at all what Ms. Mardian is arguing.  
2 She is making a standard claim—brought in dozens of habeas petitions throughout  
3 the country—that her prolonged detention without a bond hearing violates due  
4 process. Doc. 7 at 6–10 (collecting cases). Her petition discussed her conditions of  
5 confinement only because some courts have deemed that factor relevant to whether  
6 continued detention without a bond hearing violates due process. *Sanchez-Rivera*  
7 *v. Matuszewski*, No. 22-CV-1357-MMA (JLB), 2023 WL 139801, at \*5–6 (S.D.  
8 Cal. Jan. 9, 2023). Other courts have found that that factor is not probative. *Id.* This  
9 Court therefore has two options: The Court may either consider the conditions of  
10 confinement as part of a classic detention-based habeas claim, or the Court may  
11 decline to consider them after deeming that factor irrelevant to the detention  
12 analysis. No matter what course this Court takes, Ms. Mardian would prevail. The  
13 government’s arguments about the proper scope of habeas are therefore irrelevant.  
14 *See* Doc. 10 at 2–3.

15 Second, because Ms. Mardian does not make a standalone conditions-of-  
16 confinement claim, the legal standards governing those kinds of claims do not apply  
17 here. *Contra* Doc. 10 at 2–4. Ms. Mardian is not arguing that her conditions of  
18 confinement—including her psychiatric treatment—violate the Due Process  
19 Clause. And she need not make that argument to win the claim that she is actually  
20 making, namely, that due process prohibits her prolonged detention without a bond  
21 hearing. When courts consider conditions as part of a prolonged detention petition,  
22 they do not require the litigant to show that their conditions of confinement  
23 themselves violate due process. To the contrary, courts have found that relatively  
24 normal jail conditions—like being “locked up behind razor wire and concrete walls  
25 in a secured facility, forced to wear a color-coded prisoner jump suit, forbidden  
26 from accessing the internet, restricted access to outdoor space, restricted on  
27 visitation, and guarded at all times with armed guards authorized to inflict  
28 punishment for violations of rules,” *Abdul Kadir*, 2025 WL 2932654, at \*5—weigh

1 in favor of a hearing, because civil detainees should not be arbitrarily subjected  
2 even to normal jail conditions. The government's arguments about the standards  
3 applicable to civil conditions-of-confinement cases are therefore irrelevant. *See*  
4 *Doc. 10 at 2–4.*

5 Third, Ms. Mardian does not deny that 8 U.S.C. § 1225(b) provides for her  
6 mandatory detention. She instead argues that that statute violates due process as  
7 applied to her. She therefore seeks a bond hearing as a constitutional, rather than as  
8 a statutory, matter. The government's arguments establishing the undisputed fact  
9 that § 1225(b) provides for mandatory detention are therefore irrelevant. *See Doc.*  
10 *10 at 4, 7–8.*

11 **II. Neither *Thuraissigiam* nor 8 U.S.C. § 1252(b)(9) prevent this Court**  
12 **from ordering a bond hearing.**

13 Besides making these irrelevant points, the government raises two threshold  
14 objections to Ms. Mardian's bond hearing request. Neither hold water.

15 *First*, the government says that 8 U.S.C. § 1252(b)(9) robs this Court of  
16 jurisdiction to consider her prolonged-detention claim. *Doc. 10 at 5–7.* Supreme  
17 Court and Ninth Circuit precedent foreclose that argument. *See Garcia v. Noem*,  
18 *No. 25-CV-02180-DMS-MMP, 2025 WL 2549431, at \*3 (S.D. Cal. Sept. 3, 2025)*  
19 *(rejecting this argument and reviewing the relevant precedent).*

20 In *Jennings v. Rodriguez*, 583 U.S. 281 (2018), the Supreme Court held that  
21 § 1252(b)(9) did not rob it of jurisdiction to decide whether § 1225(b) permitted  
22 detention without a bond hearing. The Court reasoned:

23 We are required in this case to decide 'questions of law,' specifically,  
24 whether . . . certain statutory provisions require detention without a  
25 bond hearing. . . . [R]espondents are not asking for review of an order  
26 of removal; they are not challenging the decision to detain them in the  
27 first place or to seek removal; and they are not even challenging any  
28 part of the process by which their removability will be  
determined. Under these circumstances, § 1252(b)(9) does not present  
a jurisdictional bar.

1 *Id.* at 292, 294–95; *see also Nielsen v. Preap*, 586 U.S. 392, 402 (2019) (plurality  
2 opinion) (reaffirming that principle).

3 The Ninth Circuit in *Gonzalez v. United States Immigr. & Customs Enft*, 975  
4 F.3d 788, 810 (9th Cir. 2020), later interpreted *Jennings* to mean that § 1252(b)(9)  
5 permits challenges to detention, so long as the litigant does not challenge  
6 underlying removal proceedings. As the Court explained, “Section 1252(b)(9) is a  
7 targeted and narrow provision that is certainly not a bar where, as here, the parties  
8 are not challenging any removal proceedings.” *Id.* (cleaned up). Section  
9 1252(b)(9) is therefore “not a bar to jurisdiction” when a litigant raises “claims  
10 challenging the legality of detention,” which are “independent of the removal  
11 process.” *Id.*

12 Here, Ms. Mardian is not challenging any removal proceedings but is only  
13 challenging the legality of her detention. Section 1252(b)(9) therefore does not bar  
14 her claims.

15 *Second*, the government argues that arriving immigrants like Ms. Mardian  
16 have no due process rights per *Department of Homeland Security v. Thuraissigiam*,  
17 591 U.S. 103, 138–40 (2020). This Court should reject that disturbing argument, as  
18 “[m]ost courts” have. *Gao v. LaRose*, No. 25-CV-2084-RSH-SBC, 2025 WL  
19 2770633, at \*3 (S.D. Cal. Sept. 26, 2025); *see, e.g., Abdul-Samed v. Warden of*  
20 *Golden State Annex Det. Facility*, No. 25-cv-98-SAB-HC, 2025 WL 2099343, at  
21 \*6 (E.D. Cal. July 25, 2025); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal.  
22 2020); *Hernandez v. Wofford*, No. 25-cv-986-KES-CDB (HC), 2025 WL 2420390,  
23 at \*3 (E.D. Cal. Aug. 21, 2025); *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1171–72  
24 (W.D. Wash. 2023). “*Thuraissigiam* addressed a noncitizen’s right to challenge  
25 *admission*, not detention.” *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025  
26 WL 2932654, at \*4 (S.D. Cal. Oct. 15, 2025). “Nowhere in that decision did the  
27 Supreme Court suggest that arriving aliens being held under § 1225(b) may be held  
28 indefinitely and unreasonably with no due process implications, nor that such aliens

1 have no due process rights whatsoever.” *A.L. v. Oddo*, 761 F. Supp. 3d 822, 825  
2 (W.D. Pa. 2025).<sup>1</sup>

3 These threshold objections are therefore meritless, and this Court should  
4 proceed to evaluate whether § 1225(b) violates due process as applied here.

5 **III. The government barely even tries to argue on the merits that**  
6 **Ms. Mardian’s detention without a bond hearing complies with due**  
7 **process.**

8 The government does not deny that when deciding whether prolonged  
9 detention violates the due process clause, courts typically look to either three or  
10 five factors. *See Sanchez-Rivera*, 2023 WL 139801, at \*5–6 (surveying different  
11 approaches). Courts generally agree that relevant factors include:

- 12 (1) “the total length of detention to date,”
- 13 (2) “the likely duration of future detention,” and
- 14 (3) “the delays in the removal proceedings caused by the petitioner and the  
15 government.”

16 *Id.* Some courts also consider:

- 17 (4) “the conditions of detention,” and
- 18 (5) “the likelihood that the removal proceedings will result in a different final  
19 order.”

20 *Id.* The government makes no argument whatsoever about factors 2, 3, or 5. Doc.  
21 10 at 9–10. (Notably as to factor 5, Dr. Kalhor’s declaration could not possibly  
22 affect the merits of Ms. Mardian’s BIA appeal, because her declaration is not in the  
23 appellate record before the BIA.) Hearing no objection from the government, then,  
24 this Court should find that all of those factors favor a bond hearing.

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25 <sup>1</sup> *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 207-09 (1953), is even  
26 less on point. “*Mezei* involved a noncitizen who was permanently excluded from  
27 the United States on security grounds, not a detainee raising their due process rights  
28 in the context of detention without a bond hearing.” *Amado v. USDOJ*, No.  
25CV2687-LL(DDL), 2025 WL 3079052, at \*5 (S.D. Cal. Nov. 4, 2025). Plus, the  
Supreme Court has since called into question *Mezei*’s continued validity. *See*  
*Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020).

1 The government does discuss the first factor, length of detention. Doc. 10 at  
2 9–10. But the government’s own cited precedent establishes that “[i]n general, as  
3 detention continues past a year, courts become extremely wary of permitting  
4 continued custody absent a bond hearing.” Doc. 10 at 9 (quoting *Sibomana v.*  
5 *LaRose*, No. 22-cv-933-LL-NLS, 2023 WL 3028093, at \*4 (S.D. Cal. Apr. 20,  
6 2023)). The government concedes that Ms. Mardian has been detained for over a  
7 year. Doc. 10 at 10. The government’s claim that Ms. Mardian has not been  
8 detained for long enough therefore makes no sense.

9 The government places most emphasis on the fourth factor, conditions of  
10 confinement. Doc. 10 at 10. But the government does not dispute that Ms. Mardian  
11 is being held in conditions “indistinguishable from penal confinement.” *Kydyrali*,  
12 499 F. Supp. 3d at 773. For that reason alone—without even considering the effect  
13 of detention on her mental health—this factor is met. *See id.*; *Abdul Kadir*, 2025  
14 WL 2932654, at \*5.

15 Ms. Mardian’s petition also noted that her mental health had badly  
16 deteriorated in custody, citing both her daughter’s sworn testimony and a  
17 psychiatric evaluation. Doc. 7-1 at ¶¶ 5–7; Exh. B. The government disputes this,  
18 citing Dr. Kahlor’s declaration. Doc. 10-2.

19 But ultimately, this Court need not settle the parties’ dispute about mental  
20 health, for four reasons. First, many courts think that conditions of confinement are  
21 not proper considerations at all, so this Court could decline to consider them. *See*  
22 *Sanchez-Rivera*, 2023 WL 139801, at \*5–6. Second, any conditions-of-  
23 confinement factor favors Ms. Mardian regardless of the quality of her mental  
24 health treatment, because her conditions are indistinguishable from penal custody.  
25 *Kydyrali*, 499 F. Supp. 3d at 773; *Abdul Kadir*, 2025 WL 2932654, at \*5. Third,  
26 even if the conditions-of-confinement factor somehow favored the government,  
27 every other factor would weigh in favor of a bond hearing. Fourth, this Court must  
28 reject any proposal to deny Ms. Mardian a bond hearing to ensure she continues her

1 therapy with Dr. Kahlor. Doc. 10 at 3–4, 9–10. To state what should be obvious,  
2 the government may not use immigration detention to involuntarily commit people  
3 whom it thinks would be better off in jail. Thus, whatever the truth of Ms. Mardian’s  
4 mental state or mental health care, this Court must grant the petition.

5 On a final note, it is not true—as the government implies, Doc. 10 at 11—  
6 that this motion goes against Ms. Mardian’s own wishes. After receiving an  
7 appointment order from this Court, a Federal Defenders attorney met with  
8 Ms. Mardian in person at Otay Mesa. On hearing that Federal Defenders would be  
9 helping with her bond motion, Ms. Mardian cried and said, “I love you.” She also  
10 consented to Federal Defenders’ plan to get information about her case from her  
11 daughter in light of her serious mental health conditions. Unsurprisingly, then,  
12 Ms. Mardian does not want to be in jail. She wants the bond hearing to which she  
13 is entitled. This Court must grant her motion.

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16 Respectfully submitted,

17 Dated: January 7, 2026

*s/ Katie Hurrelbrink*

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