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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 ZULQUARNAIN AKBAR,

12 Petitioner-Plaintiff,

13 v.

14 CHRISTOPHER J. LAROSE, et al.

15 Respondents-Defendants.

Case No.: 25-cv-3510-RSH-VET

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

1 **A. Petitioner’s Habeas Claims Are Not Barred by 8 U.S.C. § 1252(g)**

2 The Respondents contend Petitioner is subject to the mandatory detention
3 provisions of Section 1225(b)(2), and that ICE had authority to continue to detain him.

4 Petitioner does not make *any claim or cause of action arising from any decision to*
5 *commence or adjudicate removal proceedings or execute removal orders.* Petitioner does
6 not dispute the commencement or any other aspect of his removal proceedings nor does
7 he have a removal order. In short, Petitioner challenges nothing related to his removal
8 proceedings – he challenges his continued unreasonably prolonged detention in violation
9 of his Due Process rights. Therefore, the jurisdictional bar under 8 U.S.C. § 1252(g) does
10 not apply here. In short, this action concerns the unlawful detention of the Petitioner and
11 the Supreme Court and Ninth Circuit have rejected Respondents’ contention that §
12 1252(g) covers all claims arising from deportation proceedings or imposes a general
13 jurisdictional limitation. *See Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591
14 U.S. 1, 19, 140 S. Ct. 1891, 207 L. Ed. 2d 353 (2020); see also *Arce v. United States*, 899
15 F.3d 796, 800 (9th Cir. 2018) (“[W]e have limited [§ 1252(g)]’s jurisdiction-stripping
16 power to actions challenging the Attorney General’s discretionary decisions to initiate
17 proceedings, adjudicate cases, and execute removal orders.”)

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

24 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

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

11 Recently, this Court has applied the same reasoning as the majority of courts,
12 holding that a petitioners detained under Section 1225(b)(1) may assert a due process
13 challenge to prolonged mandatory detention. Mingzhi Gao v. Larose, 25-cv-2084-RSH-
14 SBC, 2025 WL 495253 (S.D. Cal. Sep. 26, 2025); Sadeqi v. Larose, 25-cv-2587-RSH-
15 BJW, (S.D. Cal. Nov. 12, 2025); Faizi v. Larose, 25-cv-2974-JO-MSB, (S.D. Cal. Nov.
16 13, 2025); Elikaei v. Larose, 3:25-cv-03219-DMS-AHG, (S.D. Cal. Dec. 10, 2025);
17 Dogan v. Larose, 3:25-cv-03525-DMS-BJW, (S.D. Cal. Dec. 23, 2025).

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

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17 Additionally, similar to Mingzhi Gao v. Larose, Petitioner has also been granted
18 relief by an immigration judge, in the form of withholding of removal. "Although this
19 relief does not vouchsafe Petitioner's continued presence in the United States, it suggests
20 that his asylum claim—whether or not his appeal will ultimately be successful—is not
21 wholly without merit. The granting of withholding of removal also means that, even if
22 Petitioner were to withdraw his appeal and his order of removal became final
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1 immediately, Petitioner would not be immediately removable to his country of origin.” Id
2 at 13. “Petitioner’s circumstances suggest that even if he were not appealing the denial of
3 asylum, he would face delays in removal through no fault of his own.”² Id.

4
5 Lastly, Mezei³ also does not help the government as this case does not involve
6 particularized national security risks or emergency regulations, as in *Mezei*, 345 U.S. at
7 214-16. See Jennings v. Rodriguez, 583 U.S. 281, 340 (2018) (Breyer, J.,
8 dissenting); Jean v. Nelson, 472 U.S. 846, 872 (1985) (Marshall, J., dissenting); Mezei,
9 345 U.S. at 217 (Black, J., dissenting). The government has failed to articulate any
10 particularized national security risks that Petitioner may pose.

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

13
14 **C. The Fifth Amendment Applies to “All Persons,” Including Akbar**

15 The Fifth Amendment’s Due Process Clause applies to “all persons” within the
16 United States. This protection is not contingent on immigration status or the “entry
17 fiction.” Akbar’s liberty interest in freedom from physical restraint is profound and
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20 ² If Petitioner were to dismiss his asylum appeal, it appears he would no longer be subject
21 to mandatory detention under Section 1225(b)(1)(B)(ii), but would instead be subject to
22 Section 1231(a), and if not removed within a 90-day period of mandatory detention
would be statutorily eligible for supervision in lieu of detention. See 8 U.S.C. §§
23 1231(a)(2)(A), (a)(3).

24 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.

1 protected. Zadvydas v. Davis, 533 U.S. 678, 690 (2001); Singh v. Holder, 638 F.3d 1196,
2 1203 (9th Cir. 2011). The Supreme Court has long been solicitous of the constitutional
3 rights of noncitizens. Yick Wo v. Hopkins, 118 U.S. 356, 369 (1886) (“The fourteenth
4 amendment to the constitution is not confined to the protection of citizens.”). Both
5 “removable and inadmissible aliens are entitled to be free from detention that is arbitrary
6 or capricious.” Zadvydas at 721.

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

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

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

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

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

13
14 As Court assessed, “Jennings did not determine the constitutional question at issue
15 here—whether arriving aliens subject to prolonged detention under 8 U.S.C § 1225(b) are
16 entitled to a bond hearing as a matter of due process.” Kydyrali, 499 F. Supp. 3d at 772
17 (citing Jennings, 138 S. Ct. at 851); *see also* German Santos v. Warden Pike Cnty. Corr.
18 Facility, 965 F.3d 203, 210 (3d Cir. 2020)(“Jennings ... left our framework for assessing
19 as-applied constitutional challenges intact”).
20

21 Therefore, Akbar’s detention of over thirteen months and counting, without an
22 individualized bond hearing, is unreasonable prolonged and violates substantive due
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24

1 process. This Court should apply the Kydyrali factors (recently applied by Judge Huie in
2 *Mingzhi Gao* as well as by other judges in this district subsequently as cited above).

3 The Kydyrali factors favor the release of the Akbar as follows:

4 *Duration of Detention*

5
6 First, Akbar has been detained since November 21, 2024. This is an “unreasonably
7 prolonged” period and the lack of any individualized assessment or prospect for release
8 makes the detention inherently punitive and unconstitutional under Mathews v. Eldridge,
9 424 U.S. 319 (1976).

10 *Government’s Interest*

11 Second, the government’s interest is minimal. Respondents make no showing of
12 any particularized danger to the community or flight risk. They offer no justification
13 beyond the bare assertion of mandatory detention. Policy quotas or administrative
14 convenience are insufficient interests to override liberty interests. (Hernandez v.
15 Sessions, 872 F.3d 976, 996 (9th Cir. 2017) - noting staggering detention costs).

17 Indeed, there is no evidence that Akbar has done anything to delay his case.
18 Akbar’s hearings were rescheduled on multiple occasions by the government and his case
19 was reassigned to a different IJ mid-proceedings. Akbar complied by all the filing
20 deadlines that the Court set, and he timely filed his asylum application as well as all the
21 supporting documentations. After the IJ denied asylum but granted withholding of
22 removal on August 29, 2025, Akbar timely filed his appeal. His appeal continues to be
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1 pending before the BIA and it is unknown when the BIA will complete its adjudication of
2 the appeal, and in the event the BIA affirms the IJ's decision, Mr. Akbar will file a
3 petition for review before the Ninth Circuit Court of Appeals, which could take many
4 additional months if not years to be completed. If the BIA reverses the IJ, then his case
5 will likely be remanded back to a the IJ which will take several additional months if not
6 over a year. This period is well beyond the presumptively reasonable six-month period
7 set forth in Zadvydas, 533 U.S. at 701. Courts consistently find detention beyond this
8 threshold triggers due process scrutiny. See Kydyrali, 499 F.Supp. 3d at 774–75.

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

11 Akbar has a profound liberty interest in freedom from physical restraint (Morrissey
12 v. Brewer, 408 U.S. 471 (1972)). The risk of erroneous deprivation is high without an
13 individualized hearing. There is no evidence that he is a danger to the community or a
14 flight risk.
15

16 *Fiscal/Administrative Burden*

17 The burden of releasing Akbar is nil and the burden of providing a bond hearing is
18 negligible compared to the substantial cost of detention (\$158/day/detainee) and the
19 constitutional imperative. Release is fiscally prudent and administratively simple.
20

21 Finally, under Mathews, the balance of factors tips sharply in favor of – at a
22 minimum – requiring an individualized bond hearing to assess Akbar's flight risk and
23 dangerousness. The government's bare reliance on a statutory classification (even if
24

1 applicable) cannot substitute for the individualized determination required by due process
2 before depriving a person of liberty for a significant period. (*Kydryali*, 499 F. Supp. 3d at
3 772; *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1106 (W.D. Wash. 2019)).

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

5 Akbar has been detained since November 21, 2024. In addition to this being an
6 “unreasonably prolonged” period, the lack of any individualized assessment or prospect
7 for release, coupled with his serious medical conditions as outlined in the petition, makes
8 the detention inherently punitive and unconstitutional under *Mathews*, 424 U.S. 319
9 (1976). As mentioned above, Akbar’s proceedings is still pending. In the event the BIA
10 affirms the IJ’s decision, Akbar will petition to the Ninth Circuit.

11
12 **A. Akbar Has a Protected Liberty Interest and the *Mathews v. Eldridge***
13 **Balancing Test Tips in his Favor**

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

21
22 The *Mathews* factors all favor Akbar. The government’s interest in keeping Akbar
23 in detention is very low, and when weighed against his significant private interest in his
24

1 liberty, the scale tips sharply in favor of releasing him from custody. Moreover, detention
2 cannot have a punitive purpose. Respondents cannot plausibly assert an interest in
3 continuing to detain Akbar after over thirteen months of detention. There is no evidence
4 of Akbar being a danger to the community or a flight risk.
5

6 The government's interest in detaining Akbar is extremely low at best. That ICE
7 has a policy to make a minimum number of arrests each day under the new
8 administration does not constitute a valid increase in the government's interest in
9 detaining him. Moreover, the "fiscal and administrative burdens" that release from
10 custody would provide are nil. In fact, release from custody is far less costly than keeping
11 Akbar detained. As the Ninth Circuit noted in 2017, which remains even more true today,
12 "[t]he costs to the public of immigration detention are 'staggering': \$158 each day per
13 detainee, amounting to a total daily cost of \$6.5 million." Hernandez v. Session, 872 F.3d
14 976, 996 (9th Cir. 2017).
15

16 **B. The Petition Meets All Habeas Rule 2(c) Requirement**

- 17 • Rule 2(c) Compliance: Petition "specifies all the grounds for relief" and "states the
18 facts supporting each ground."
19
- 20 • Specific Factual Allegations:
- 21 ○ Detention duration: 13 months as of December 21, 2025.
 - 22 ○ No individualized assessment of flight risk or danger to community.
 - 23 ○ Government delays: Multiple continuances by the government, case
24 reassigned to different immigration judge, administrative appeal delay.

1 Dated: January 1, 2026,

2
3 By: /s/ Bashir Ghazialam
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6 Email: bg@lobg.net
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CERTIFICATE OF SERVICE

I hereby certify that on January 1, 2026, 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: January 1, 2026

/s/ Bashir Ghazialam
Bashir Ghazialam

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