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10 Attorneys for Petitioner

11 UNITED STATES DISTRICT COURT  
12 SOUTHERN DISTRICT OF CALIFORNIA

13 ISMAIL ORHAN DOGAN,

14 Petitioner-Plaintiff,

15 v.

16 CHRISTOPHER J. LAROSE, et al.

17 Respondents-Defendants.

Case No.: 25-cv-3525-DMS-BJW

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

1 Petitioner replies to Respondents' Return as follows:

2 **A. Petitioner's Habeas Claims Are Not Barred by 8 U.S.C. § 1252**

3 Section 1252 does not apply to bar jurisdiction because this action concerns  
4 Petitioner's unlawful and prolonged detention. The Respondents contend Petitioner is  
5 subject to the mandatory detention provisions of Section 1225(b)(2), and that ICE had  
6 authority to continue to detain the Petitioner.  
7

8 In this petition, Petitioner does not make *any claim or cause of action arising from*  
9 *any decision to commence or adjudicate removal proceedings or execute removal orders.*

10 Petitioner does not dispute the commencement or any other aspect of his removal  
11 proceedings nor does he have a removal order. In short, Petitioner challenges nothing  
12 related to his removal proceedings – he challenges the Respondents' continued  
13 unreasonably prolonged detention in violation of his Due Process rights. Therefore, the  
14 jurisdictional bar under 8 U.S.C. § 1252(g) does not apply here.

15 The government's contention that 8 U.S.C. § 1252(b)(9) bars jurisdiction of this  
16 Court is similarly unavailing. Petitioner is not seeking “[j]udicial review of all questions  
17 of law and fact . . . arising from any action taken or proceeding brought to remove an  
18 alien from the U.S.. Again, the Petitioner is not challenging anything with respect to his  
19 removal proceedings – he is challenging his unlawful detention. As previously stated, the  
20 Petitioner cannot be seeking *judicial review of a final order of removal*, as he does not  
21 have a removal order. Petitioner's removal proceedings continue to be pending in  
22 immigration court. See the EOIR Online Case Information System corresponding to  
23  
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1 Petitioner's Agency Number, accessible at:

2 <https://acis.eoir.justice.gov/en/caseInformation>.

3 In short, this action concerns the unlawful detention of the Petitioner and the  
4 Supreme Court and Ninth Circuit have rejected Respondents' contention that § 1252(g)  
5 covers all claims arising from deportation proceedings or imposes a general jurisdictional  
6 limitation. *See Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19,  
7 140 S. Ct. 1891, 207 L. Ed. 2d 353 (2020); see also *Arce v. United States*, 899 F.3d 796,  
8 800 (9th Cir. 2018) ("[W]e have limited [§ 1252(g)]'s jurisdiction-stripping power to  
9 actions challenging the Attorney General's discretionary decisions to initiate proceedings,  
10 adjudicate cases, and execute removal orders.")

11  
12 **B. Dogan's Classification as an "Arriving Alien" and Subjection to 8 U.S.C. §**  
13 **1225(b)(1) Notwithstanding, He Has Due Process Rights Beyond Those That**  
14 **Congress Has Provided, and *Thuraissigiam* Does Not Bar Substantive Due**  
15 **Process Claims**

16 Respondents argue that under the Supreme Court's decision in Department of  
17 Homeland Security v. Thuraissigiam, 591 U.S. 103 (2020), Petitioner as an "arriving  
18 alien" has no due process rights beyond those that Congress has provided. Dkt. 5, at 11.  
19 In Thuraissigiam, the Supreme Court rejected a habeas petitioner's argument that the due  
20 process clause conferred rights to challenge his order of expedited removal beyond those  
21 established by Congress, stating that "an alien at the threshold of initial entry cannot  
22 claim any greater rights under the Due Process Clause." 591 U.S. at 107. The petitioner in  
23 that case had "attempted to enter the country illegally and was apprehended just 25 yards  
24

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

8 Although following the Supreme Court's decision in Thuraissigiam, some district  
9 courts have adopted the reasoning to dismiss or deny habeas petitions in the context of  
10 arriving aliens subject to mandatory detention under Section 1225(b)(1)<sup>1</sup>, however, most  
11 courts have ruled otherwise. See Abdul-Samed v. Warden of Golden State Annex Det.  
12 Facility, No. 25-cv-98-SAB-HC, 2025 WL 2099343, at \*6 (E.D. Cal. July 25, 2025)  
13 ("Although the Ninth Circuit has yet to take a position on whether due process requires a  
14 bond hearing for noncitizens detained under 8 U.S.C. § 1225(b) .... 'essentially all district  
15 courts that have considered the issue agree that prolonged mandatory detention pending  
16 removal proceedings, without a bond hearing, will—at some point—violate the right to  
17 due process.'") (citing Martinez v. Clark, No. C18-1669-RAJ-MAT, 2019 WL 5968089,  
18 at \*6 (W.D. Wash. May 23, 2019)); Kydyrali v. Wolf, 499 F. Supp. 3d 768, 772 (S.D.  
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21  
22 <sup>1</sup> 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 Cal. 2020) ("[T]he Court joins the majority of courts across the country in concluding  
2 that an unreasonably prolonged detention under 8 U.S.C. § 1225(b) without an  
3 individualized bond hearing violates due process. ").

4  
5 Recently, this Court has applied the same reasoning as the majority of courts,  
6 holding that a petitioners detained under Section 1225(b)(1) may assert a due process  
7 challenge to prolonged mandatory detention. Mingzhi Gao v. Larose, 25-cv-2084-RSH-  
8 SBC, 2025 WL 495253 (S.D. Cal. Sep. 26, 2025); Sadeqi v. Larose, 25-cv-2587-RSH-  
9 BJW, (S.D. Cal. Nov. 12, 2025); Faizi v. Larose, 25-cv-2974-JO-MSB, (S.D. Cal. Nov.  
10 13, 2025); Elikaei v. Larose, 3:25-cv-03219-DMS-AHG, (S.D. Cal. Dec. 10, 2025).

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

9 Lastly, Mezei<sup>2</sup> also does not help the government as this case does not involve  
10 particularized national security risks or emergency regulations, as in Mezei, 345 U.S. at  
11 214-16. See Jennings v. Rodriguez, 583 U.S. 281, 340 (2018) (Breyer, J.,  
12 dissenting); Jean v. Nelson, 472 U.S. 846, 872 (1985) (Marshall, J., dissenting); Mezei,  
13 345 U.S. at 217 (Black, J., dissenting). The government has failed to articulate any  
14 particularized national security risks that Petitioner may pose.  
15

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

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

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 <sup>2</sup> 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 fiction.” Dogan’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). The Supreme Court has long been solicitous of the constitutional  
4 rights of noncitizens. Yick Wo v. Hopkins, 118 U.S. 356, 369 (1886) (“The fourteenth  
5 amendment to the constitution is not confined to the protection of citizens.”). Both  
6 “removable and inadmissible aliens are entitled to be free from detention that is arbitrary  
7 or capricious.” Zadvydas at 721.

9 **A. Judicial Forum Required for Constitutional Claims**

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

17 **B. Dogan’s Detention Has Become “Unreasonably Prolonged” Which Without a  
18 Bond Hearing Violates Due Process**

19 Even before Jennings, many courts recognized detention became unreasonably  
20 prolonged at six months. Applying the canon of “constitutional avoidance,” the Ninth  
21 Circuit has ruled that “[a]s a general matter, detention is prolonged when it has lasted six  
22 months and is expected to continue more than minimally beyond six months.” Diouf v.  
23 Napolitano, 634 F. 3d 1081, 1092 (9<sup>th</sup> Cir. 2011). Specifically addressing mandatory  
24

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

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

14  
15 As Court assessed, “Jennings did not determine the constitutional question at issue  
16 here—whether arriving aliens subject to prolonged detention under 8 U.S.C § 1225(b) are  
17 entitled to a bond hearing as a matter of due process.” Kydyrali, 499 F. Supp. 3d at 772  
18 (citing Jennings, 138 S. Ct. at 851); see also German Santos v. Warden Pike Cnty. Corr.  
19 Facility, 965 F.3d 203, 210 (3d Cir. 2020)(“Jennings ... left our framework for assessing  
20 as-applied constitutional challenges intact”).  
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1 Therefore, Dogan’s prolonged detention without an individualized bond hearing  
2 violates substantive due process. This Court should apply the Kydyrali factors (recently  
3 applied by Judge Huie in *Mingzhi Gao*).

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

5  
6 *Duration of Detention*

7 First, Dogan has been detained since January 6, 2025. 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 showing of  
13 any particularized danger to the community or flight risk. They offer no justification  
14 beyond the bare assertion of mandatory detention. Policy quotas or administrative  
15 convenience are insufficient interests to override liberty interests. (Hernandez v.  
16 Sessions, 872 F.3d 976, 996 (9th Cir. 2017) - noting staggering detention costs). Indeed,  
17 there is no evidence that Dogan has done anything to delay his case. Dogan’s hearings  
18 were rescheduled on multiple occasions by the court without his request. Dogan complied  
19 by all the filing deadlines that the Court set, and he timely filed his asylum application as  
20 well as all the supporting documentations. Although on August 27, 2025, the IJ finally set  
21 Dogan’s proceedings for a final individual merits hearing for December 16, 2025, that  
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1 hearing was later vacated due to the abrupt termination of the assigned IJ and the transfer  
2 of the proceedings to a new IJ, further prolonging the proceedings. Assuming that the IJ  
3 grants Dogan's application at his newly reset hearing of February 2, 2026, the  
4 government will like appeal the decision to the Board of Immigration Appeal which will  
5 result in the continue detention of Dogan. In the even the IJ denies the relief that Dogan is  
6 requesting, then he will appeal to the BIA and the IJ decision will not become final until  
7 that appeal is adjudicated. And even in the event the BIA appeal is dismissed, Dogan has  
8 a right to petition before the Ninth Circuit Court of Appeals.  
9

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

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

16 *Fiscal/Administrative Burden*

17 The burden of releasing Dogan 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 Dogan'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  
6 Dogan has been detained since January 6, 2025. In addition to this being an  
7 “unreasonably prolonged” period, the lack of any individualized assessment or prospect  
8 for release makes the detention inherently punitive and unconstitutional under Mathews,  
9 424 U.S. 319 (1976). As mentioned above, Dogan’s proceedings before the Immigration  
10 Court is still pending. In the event his relief application are denied, he will appeal to the  
11 BIA and assuming that the BIA affirms the IJ’s decision, Dogan will petition to the Ninth  
12 Circuit.

13  
14 **C. Dogan Has a Protected Liberty Interest and the *Mathews v. Eldridge*  
Balancing Test Tips in his Favor**

15 Under the test set forth in Mathews, this Court should consider the following three  
16 factors: “first, the private interest that will be affected by the official action; second, the  
17 risk of an erroneous deprivation of such interest through the procedures used, and the  
18 probative value, if any, of additional or substitute procedural safeguards; and finally the  
19 government’s interest, including the function involved and the fiscal and administrative  
20 burdens that the additional or substitute procedural requirements would entail.” See  
21 Mathews v. Eldridge, 424 U.S. 319, 335 (1976).  
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1 The Matthews factors all favor Dogan. The government's interest in keeping  
2 Dogan in detention is very low, and when weighed against his significant private interest  
3 in his liberty, the scale tips sharply in favor of releasing him from custody. Moreover,  
4 detention cannot have a punitive purpose. Respondents cannot plausibly assert an interest  
5 in continuing to detain Dogan after almost a year of detention. There is no indication of  
6 Dogan being a danger to the community or a flight risk.

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

18 **D. The Petition Meets All Habeas Rule 2(c) Requirement**

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

1 Dated: December 17, 2025,

2 By: /s/ Bashir Ghazialam  
3 Bashir Ghazialam  
4 Attorney for Petitioner  
5 Email: bg@lobg.net  
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**CERTIFICATE OF SERVICE**

I hereby certify that on December 17, 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 17, 2025

/s/ Bashir Ghazialam  
Bashir Ghazialam

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