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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 LUIS ANTONIO RAMOS
12 VILLANUEVA,
13
14 Petitioner-Plaintiff,

15 v.

16 CHRISTOPHER J. LAROSE, et al.
17
18 Respondents-Defendants.

Case No.: 3:25-cv-03679-CAB-SBC

**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(g)**

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 Here, Petitioner does not make *any claim or cause of action arising from any*
9 *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 his continued unreasonably prolonged
13 detention by the Respondents in violation of his Due Process rights. Therefore, the
14 jurisdictional bar under 8 U.S.C. § 1252(g) does not apply here.

15 In short, this action concerns the unlawful detention of the Petitioner and the
16 Supreme Court and Ninth Circuit have rejected Respondents' contention that § 1252(g)
17 covers all claims arising from deportation proceedings or imposes a general jurisdictional
18 limitation. *See Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19,
19 140 S. Ct. 1891, 207 L. Ed. 2d 353 (2020); see also *Arce v. United States*, 899 F.3d 796,
20 800 (9th Cir. 2018) ("[W]e have limited [§ 1252(g)]'s jurisdiction-stripping power to
21 actions challenging the Attorney General's discretionary decisions to initiate proceedings,
22 adjudicate cases, and execute removal orders.")
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1 **B. Ramos Villanueva’s Classification as an “Arriving Alien” and Subjection to 8**
2 **U.S.C. § 1225(b)(1) Notwithstanding, He Has Due Process Rights Beyond**
3 **Those That Congress Has Provided, and *Thuraissigiam* Does Not Bar**
4 **Substantive Due Process Claims**

5 Respondents argue that under the Supreme Court's decision in Department of
6 Homeland Security v. Thuraissigiam, 591 U.S. 103 (2020), Petitioner as an arriving alien
7 has no due process rights “other than those afforded by statute.” Dkt. 6, at 5. In
8 Thuraissigiam, the Supreme Court rejected a habeas petitioner's argument that the due
9 process clause conferred rights to challenge his order of expedited removal beyond those
10 established by Congress, stating that "an alien at the threshold of initial entry cannot
11 claim any greater rights under the Due Process Clause." 591 U.S. at 107. The petitioner in
12 that case had "attempted to enter the country illegally and was apprehended just 25 yards
13 from the border." Id. The Supreme Court determined that the "political department of the
14 government" had plenary authority to admit or exclude aliens seeking initial entry, and
15 thus "an alien in respondent's position has only those rights regarding admission that
16 Congress has provided by statute." Id. at 139-40. Respondents argue that because Ramos
17 Villanueva is an "arriving alien," due process provides him nothing beyond the
18 mandatory detention scheme established by Section 1225(b)(1). Id.

19
20 Although following the Supreme Court's decision in Thuraissigiam, some district
21 courts have adopted the reasoning to dismiss or deny habeas petitions in the context of
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1 arriving aliens subject to mandatory detention under Section 1225(b)(1)¹, however, most
2 courts have ruled otherwise. See Abdul-Samed v. Warden of Golden State Annex Det.
3 Facility, No. 25-cv-98-SAB-HC, 2025 WL 2099343, at *6 (E.D. Cal. July 25, 2025)
4 ("Although the Ninth Circuit has yet to take a position on whether due process requires a
5 bond hearing for noncitizens detained under 8 U.S.C. § 1225(b) 'essentially all district
6 courts that have considered the issue agree that prolonged mandatory detention pending
7 removal proceedings, without a bond hearing, will—at some point—violate the right to
8 due process.'") (citing Martinez v. Clark, No. C18-1669-RAJ-MAT, 2019 WL 5968089,
9 at *6 (W.D. Wash. May 23, 2019)); Kydyrali v. Wolf, 499 F. Supp. 3d 768, 772 (S.D.
10 Cal. 2020) ("[T]he Court joins the majority of courts across the country in concluding
11 that an unreasonably prolonged detention under 8 U.S.C. § 1225(b) without an
12 individualized bond hearing violates due process.").

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15 Recently, this Court has applied the same reasoning as the majority of courts,
16 holding that a petitioners detained under Section 1225(b)(1) may assert a due process
17 challenge to prolonged mandatory detention. Mingzhi Gao v. Larose, 25-cv-2084-RSH-
18 SBC, 2025 WL 495253 (S.D. Cal. Sep. 26, 2025); Sadeqi v. Larose, 25-cv-2587-RSH-
19 BJW, (S.D. Cal. Nov. 12, 2025); Faizi v. Larose, 25-cv-2974-JO-MSB, (S.D. Cal. Nov.
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21
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 13, 2025); Elikaei v. Larose, 3:25-cv-03219-DMS-AHG, (S.D. Cal. Dec. 10, 2025);
2 Dogan v. Larose, 3:25-cv-03525-DMS-BJW, (S.D. Cal. Dec. 23, 2025).

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

1 Lastly, Mezei² also does not help the government as this case does not involve
2 particularized national security risks or emergency regulations, as in *Mezei*, 345 U.S. at
3 214-16. See Jennings v. Rodriguez, 583 U.S. 281, 340 (2018) (Breyer, J.,
4 dissenting); Jean v. Nelson, 472 U.S. 846, 872 (1985) (Marshall, J., dissenting); Mezei,
5 345 U.S. at 217 (Black, J., dissenting). The government has failed to articulate any
6 particularized national security risks that Petitioner may pose.
7

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

10 **C. The Fifth Amendment Applies to “All Persons,” Including Ramos Villanueva**

11 The Fifth Amendment’s Due Process Clause applies to “all persons” within the
12 United States. This protection is not contingent on immigration status or the “entry
13 fiction.” Ramos Villanueva’s liberty interest in freedom from physical restraint is
14 profound and protected. Zadvydas v. Davis, 533 U.S. 678, 690 (2001); Singh v. Holder,
15 638 F.3d 1196, 1203 (9th Cir. 2011). The Supreme Court has long been solicitous of the
16 constitutional rights of noncitizens. Yick Wo v. Hopkins, 118 U.S. 356, 369 (1886) (“The
17 fourteenth amendment to the constitution is not confined to the protection of citizens.”).
18 Both “removable and inadmissible aliens are entitled to be free from detention that is
19 arbitrary or capricious.” Zadvydas at 721.
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22 _____
23 ² 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 **D. Judicial Forum Required for Constitutional Claims**

2 Denying Ramos Villanueva a forum to challenge his prolonged detention would
3 raise a “serious constitutional question” under Webster v. Doe, 486 U.S. 592, 603 (1988).
4 As Judge Sabraw recognized in Domingo-Ros v. Archambeault, No. 25-cv-1208-DMS-
5 DEB, 2025 WL 27541, at *2 (S.D. Cal. May 18, 2025), statutes cannot be construed to
6 deny any judicial forum for a colorable constitutional claim. Ramos Villanueva’s claim
7 that his detention violates substantive due process is precisely such a claim.
8

9 **E. Ramos Villanueva’s Detention Has Become “Unreasonably Prolonged” Which**
10 **Without a Bond Hearing Violates Due Process**

11 Even before Jennings, many courts recognized detention became unreasonably
12 prolonged at six months. Applying the canon of “constitutional avoidance,” the Ninth
13 Circuit has ruled that “[a]s a general matter, detention is prolonged when it has lasted six
14 months and is expected to continue more than minimally beyond six months.” Diouf v.
15 Napolitano, 634 F. 3d 1081, 1092 (9th Cir. 2011). Specifically addressing mandatory
16 detention, the court found detention at six months was “prolonged” requiring an
17 “automatic individualized bond hearing[]” at which the government bore the burden of
18 persuasion as to why detention should continue. Rodriguez v. Robbins, 804 F.3d 1060
19 (9th Cr. 2015), *rev’d sub nom.* Jennings v. Rodriguez, 583 U.S. 281 (2018).
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21 Other circuits had similarly adopted a six-month benchmark for when detention
22 becomes constitutionally problematic. In Lora v. Shanahan, 804 F.3d 601 (2nd Cir.
23 2015), *cert. granted, judgment vacated*, 583 U.S. 1165 (2018), the court observed that
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1 “every other circuit to have considered this issue” determined that bond hearings were
2 required after six months. Lora v. Shanahan at 606. See also Ly v. Hansen, 351 F.3d 263,
3 275 (6th Cir. 2003). In 2018, in Jennings, the Court reversed the Rodriguez holding that
4 automatic bond hearings are mandated every six months as a matter of constitutional
5 avoidance. But it left open the application of due process as *applied* in specific cases.
6

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

14 Therefore, Ramos Villanueva’s detention of almost one year and counting, without
15 an individualized bond hearing, is unreasonable prolonged and violates substantive due
16 process. This Court should apply the Kydyrali factors (recently applied by Judge Huie in
17 Mingzhi Gao as well as by other judges in this district subsequently as cited above).

18 The Kydyrali factors favor the release of the Ramos Villanueva as follows:

19 *Duration of Detention*

20 First, Ramos Villanueva has been detained since January 9, 2025. This is an
21 “unreasonably prolonged” period and the lack of any individualized assessment or
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1 prospect for release makes the detention inherently punitive and unconstitutional under
2 Mathews v. Eldridge, 424 U.S. 319 (1976).

3 *Government's Interest*

4 Second, the government's interest is minimal. Respondents make no showing of
5 any particularized danger to the community or flight risk. They offer no justification
6 beyond the bare assertion of mandatory detention. Policy quotas or administrative
7 convenience are insufficient interests to override liberty interests. (Hernandez v.
8 Sessions, 872 F.3d 976, 996 (9th Cir. 2017) - noting staggering detention costs).
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10 Indeed, there is no evidence that Ramos Villanueva has done anything to delay his
11 case. Ramos Villanueva's hearings were rescheduled on multiple occasions by the court.
12 Ramos Villanueva complied by all the filing deadlines that the Court set, and he timely
13 filed his asylum application as well as all the supporting documentations. After the IJ
14 denied all forms of relief requested on August 1, 2025 and ordered Ramos Villanueva
15 removed, he timely filed his appeal and later timely filed his appeal brief according to the
16 briefing schedule. His appeal continues to be pending before the BIA and it is unknown
17 when the BIA will complete its adjudication of the appeal, and in the event the BIA
18 affirms the IJ's decision, Mr. Ramos Villanueva will file a petition for review before the
19 Ninth Circuit Court of Appeals, which could take many additional months if not years to
20 be completed. If the BIA reverses the IJ, then his case will likely be remanded back to a
21 the IJ which will take several additional months if not over a year. This period is well
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1 beyond the presumptively reasonable six-month period set forth in Zadvydas, 533 U.S. at
2 701. Courts consistently find detention beyond this threshold triggers due process
3 scrutiny. See Kydryali, 499 F.Supp. 3d at 774–75.

4 *Petitioner’s Liberty Interest & Risk of Error*

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

9 *Fiscal/Administrative Burden*

10 The burden of releasing Ramos Villanueva is nil and the burden of providing a
11 bond hearing is negligible compared to the substantial cost of detention
12 (\$158/day/detainee) and the constitutional imperative. Release is fiscally prudent and
13 administratively simple.
14

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

2 Ramos Villanueva has been detained since January 9, 2025. In addition to this
3 being an “unreasonably prolonged” period, the lack of any individualized assessment or
4 prospect for release, coupled with Ramos Villanueva’s psychological condition makes
5 the detention inherently punitive and unconstitutional under Mathews, 424 U.S. 319
6 (1976). As mentioned above, Ramos Villanueva’s proceedings is still pending. In the
7 event the BIA affirms the IJ’s decision, he will petition to the Ninth Circuit.
8

9 **A. Ramos Villanueva Has a Protected Liberty Interest and the *Mathews v.***
10 ***Eldridge* Balancing Test Tips in his Favor**

11 Under the test set forth in Mathews, this Court should consider the following three
12 factors: “first, the private interest that will be affected by the official action; second, the
13 risk of an erroneous deprivation of such interest through the procedures used, and the
14 probative value, if any, of additional or substitute procedural safeguards; and finally the
15 government’s interest, including the function involved and the fiscal and administrative
16 burdens that the additional or substitute procedural requirements would entail.” See
17 Mathews v. Eldridge, 424 U.S. 319, 335 (1976).
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19 The Mathews factors all favor Ramos Villanueva. The government’s interest in
20 keeping Ramos Villanueva in detention is very low, and when weighed against his
21 significant private interest in his liberty, the scale tips sharply in favor of releasing him
22 from custody. Moreover, detention cannot have a punitive purpose. Respondents cannot
23 plausibly assert an interest in continuing to detain Ramos Villanueva after almost a year
24

1 of detention. There is no evidence or argument presented by the Respondents of Ramos
2 Villanueva being a danger to the community or a flight risk.

3 The government's interest in detaining Ramos Villanueva is extremely low at best.
4 That ICE 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 Ramos Villanueva detained. As the Ninth Circuit noted in 2017, which remains even
9 more true today, "[t]he costs to the public of immigration detention are 'staggering': \$158
10 each day per detainee, amounting to a total daily cost of \$6.5 million." Hernandez v.
11 Session, 872 F.3d 976, 996 (9th Cir. 2017).
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14 **B. 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 9, 2026.
19 ○ No individualized assessment of flight risk or danger to community.
20 ○ Government delays: Multiple continuances by the government,
21 administrative appeal delay.
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1 Dated: January 1, 2026,

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By: /s/ Bashir Ghazialam
Bashir Ghazialam
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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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