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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10 MOHAMMAD BAYANI,

11 Petitioner,

12 v.

13 CHRISTOPHER LAROSE, warden of  
14 Otay Mesa Detention Center  
15 DANIEL A. BRIGHTMAN, San Diego  
16 Field Office Director, Immigration and  
17 Customs Enforcement and Removal  
18 Operations (“ICE/ERO”);  
19 TODD LYONS, Acting Director of  
20 Immigration Customs Enforcement  
21 (“ICE”);  
22 KRISTI NOEM, Secretary of the  
23 Department of Homeland Security  
24 (“DHS”);  
PAMELA BONDI, Attorney General of  
the United States,  
U.S. DEPARTMENT OF HOMELAND  
SECURITY;  
U.S. IMMIGRATION AND CUSTOMS  
ENFORCEMENT;

Respondents.

Case No.: **3: 26-cv-00266-JES-VET**

**TRAVERSE TO PETITION FOR WRIT  
OF HABEAS CORPUS AND ORDER TO  
SHOW CAUSE**

[oral argument waived]

1 Petitioner Mohammad Bayani, replies to Respondents' Return, stating as follows:

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

6 Respondents argue that under the Supreme Court's decision in *Department of*  
7 *Homeland Security v. Thuraissigiam*, 591 U.S. 103 (2020), Petitioner as an "arriving  
8 alien" has no due process rights beyond those that Congress has provided. In  
9 *Thuraissigiam*, the Supreme Court rejected a habeas petitioner's argument that the  
10 due process clause conferred rights to challenge his order of expedited removal  
11 beyond those established by Congress, stating that "an alien at the threshold of  
12 initial entry cannot claim any greater rights under the Due Process Clause." 591 U.S.  
13 at 107. The petitioner in that case had "attempted to enter the country illegally and  
14 was apprehended just 25 yards from the border." *Id.*

15  
16 The Supreme Court determined that the "political department of the  
17 government" had plenary authority to admit or exclude aliens seeking initial entry,  
18 and thus "an alien in respondent's position has only those rights regarding  
19 admission that Congress has provided by statute." *Id.* at 139-40. Respondents argue  
20 that because Petitioner is an "arriving alien," due process provides him nothing  
21 beyond the mandatory detention scheme established by Section 1225(b)(1).  
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1 Although, as Respondents correctly point out, following the Supreme Court's  
2 decision in *Thuraissigiam*, some district courts have adopted Respondents'  
3 reasoning to dismiss or deny habeas petitions in the context of arriving aliens  
4 subject to mandatory detention under Section 1225(b)(1)<sup>1</sup>. However, most courts  
5 have ruled otherwise. *See Abdul-Samed v. Warden of Golden State Annex Det. Facility*,  
6 No. 25-cv-98-SAB-HC, 2025 WL 2099343, at \*6 (E.D. Cal. July 25, 2025) ("Although  
7 the Ninth Circuit has yet to take a position on whether due process requires a bond  
8 hearing for noncitizens detained under 8 U.S.C. § 1225(b) .... 'essentially all district  
9 courts that have considered the issue agree that prolonged mandatory detention  
10 pending removal proceedings, without a bond hearing, will—at some point—violate  
11 the right to due process.'" (citing *Martinez v. Clark*, No. C18-1669-RAJ-MAT, 2019  
12 WL 5968089, at \*6 (W.D. Wash. May 23, 2019)); *Kydyrali v. Wolf*, 499 F. Supp. 3d  
13 768, 772 (S.D. Cal. 2020) ("[T]he Court joins the majority of courts across the  
14 country in concluding that an unreasonably prolonged detention under 8 U.S.C. §  
15 1225(b) without an individualized bond hearing violates due process.").

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19 Recently, Judge Huie applied the same reasoning as the majority of courts,  
20 holding that a petitioner detained under Section 1225(b)(1) may assert a due  
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24 <sup>1</sup> 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.")

1 process challenge to prolonged mandatory detention. *Mingzhi Gao v. Larose*, No. 25-  
2 cv-2084-RSH-SBC, 2025 WL 495253, at \*4 (S.D. Cal. Sep. 26, 2025).

3           There, the Court agreed with the majority position that a petitioner detained  
4 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  
6 that interpret *Thuraissigiam* as circumscribing an arriving alien's due process rights  
7 to admission, rather than limiting that person's ability to challenge detention. This  
8 court has made the same conclusion in *Vadim Sufiarov v. Warden*, 25cv3265-LL-  
9 DDL (S. D. Cal Jan 6, 2026) See *A.L. v. Oddo*, 761 F. Supp. 3d 822, 825 (W.D. Pa. 2025)  
10 ("Nowhere in [*Thuraissigiam*] did the Supreme Court suggest that arriving aliens  
11 being held under § 1225(b) may be held indefinitely and unreasonably with no due  
12 process implications, nor that such aliens have no due process rights whatsoever.");  
13 *Hernandez v. Wofford*, No. 25-cv-986-KES-CDB (HC), 2025 WL 2420390, at \*3 (E.D.  
14 Cal. Aug. 21, 2025) ("Although the Supreme Court has described Congress's power  
15 over the 'policies and rules for exclusion of aliens' as 'plenary,' and held that this  
16 court must generally 'defer to Executive and Legislative Branch decision-making in  
17 that area,' it is well-established that the Due Process Clause stands as a significant  
18 constraint on the manner in which the political branches may exercise their plenary  
19 authority'—through detention or otherwise.") (citations omitted); *Padilla v. ICE*, 704  
20 F. Supp. 3d 1163, 1171-72 (W.D. Wash. 2023) ("The holding in *Thuraissigiam* does  
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1 not foreclose Plaintiffs' due process claims which seek to vindicate a right to a bond  
2 hearing with certain procedural protections.").

3 Lastly, *Mezei*<sup>2</sup> also does not help the government as the government does not  
4 contend that this case involves particularized national security risks or emergency  
5 regulations, as in *Mezei*, 345 U.S. at 214-16. See *Jennings v. Rodriguez*, 583 U.S. 281,  
6 340 (2018) (Breyer, J., dissenting); *Jean v. Nelson*, 472 U.S. 846, 872 (1985)  
7 (Marshall, J., dissenting); *Mezei*, 345 U.S. at 217 (Black, J., dissenting).

9 Therefore, this Court should follow most courts, including the ruling in  
10 *Sufiiarov, supra*, and including others in this district, and find that Mr. Bayani is  
11 entitled to due process protections beyond those provided by statute.

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13 **B. The Fifth Amendment Applies to “All Persons,” Including Mr. Bayani**

14 The Fifth Amendment’s Due Process Clause applies to “all persons” within the  
15 United States. This protection is not contingent on immigration status or the “entry  
16 fiction.” Petitioner’s liberty interest in freedom from physical restraint is profound  
17 and protected. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Singh v. Holder*, 638 F.3d  
18 1196, 1203 (9th Cir. 2011).

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

#### 4 **C. Judicial Forum Required for Constitutional Claims**

5 Denying Mr. Bayani a forum to challenge his prolonged detention would raise  
6 a “serious constitutional question” under *Webster v. Doe*, 486 U.S. 592, 603 (1988).  
7 As Judge Sabraw recognized in *Domingo-Ros v. Archambeault*, No. 25-cv-1208-DMS-  
8 DEB, 2025 WL 27541, at \*2 (S.D. Cal. May 18, 2025), statutes cannot be construed to  
9 deny any judicial forum for a colorable constitutional claim. Petitioner’s claim that  
10 his detention violates substantive due process is precisely such a claim.  
11  
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#### 13 **D. Mr. Bayani’s Detention Has Become “Unreasonably Prolonged,” Which** 14 **Without a Bond Hearing Violates Due Process**

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

3 Other circuits had similarly adopted a six-month benchmark for when  
4 detention becomes constitutionally problematic. In *Lora v. Shanahan*, 804 F.3d 601  
5 (2nd Cir. 2015), *cert. granted, judgment vacated*, 583 U.S. 1165 (2018), the court  
6 observed that “every other circuit to have considered this issue” determined that  
7 bond hearings were required after six months. *Lora v. Shanahan* at 606. *See also Ly v.*  
8 *Hansen*, 351 F.3d 263, 275 (6th Cir. 2003). In 2018, in *Jennings*, the Supreme Court  
9 reversed the *Rodriguez* holding that automatic bond hearings are mandated every  
10 six months as a matter of constitutional avoidance. But the Court left open the  
11 application of due process as *applied* in specific cases.  
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14 As a judge in this district assessed, “*Jennings* did not determine the  
15 constitutional question at issue here—whether arriving aliens subject to prolonged  
16 detention under 8 U.S.C § 1225(b) are entitled to a bond hearing as a matter of due  
17 process.” *Kydyrali*, 499 F. Supp. 3d at 772 (citing *Jennings*, 138 S. Ct. at 851); see also  
18 *German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 210 (3d Cir.  
19 2020)(“*Jennings* ... left our framework for assessing as-applied constitutional  
20 challenges intact”).  
21

22 Many other local courts have found detention at or less than one year gives  
23 rise to due process concerns. *See, e.g., Hoyos Amado*, 2025 WL 3079052, at \*5  
24

1 (“Courts have found detention over seven months without a bond hearing weighs  
2 toward a finding that it is unreasonable.”) (collecting cases); *Tanoyan v. Andrews*,  
3 No. 1:25-CV-00815-SKO (HC), 2025 WL 3013684, at \*4 (E.D. Cal. Oct. 28, 2025)  
4 (“Petitioner has been detained approximately 11 months. This period ... qualifies as  
5 prolonged.”); *Gao*, 2025 WL 2770633, at \*5 (“The Court finds that Petitioner’s  
6 detention for over 10 months without a bond hearing, in the context of the specific  
7 circumstances described above, has become unreasonable and violates due  
8 process.”); *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022) (“Petitioner  
9 has been in immigration detention ... approximately one year. District court have  
10 found shorter lengths of detention ... without a bond hearing to be unreasonable.”)  
11 (collecting cases). Therefore, Mr. Bayani’s prolonged detention without an  
12 individualized bond hearing violates substantive due process. This Court must apply  
13 the *Kydyrali* factors (recently applied by Judge Huie in *Mingzhi Gao*).

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16 **The *Kydyrali* factors favor the release of the Mr. Bayani as follows:**

17 *Duration of Detention*

18 First, Mr. Bayani has been detained since January 5, 2025. This is an  
19 “unreasonably prolonged” period and the lack of any individualized assessment or  
20 prospect for release makes the detention inherently punitive and unconstitutional  
21 under *Mathews v. Eldridge*, 424 U.S. 319 (1976).  
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23 *Government’s Interest*  
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1 Second, the government's interest is minimal. Respondents make no  
2 allegation of danger to the community or flight risk. They offer no justification  
3 beyond the bare assertion of mandatory detention. Policy quotas or administrative  
4 convenience are insufficient interests to override liberty interests. (*Hernandez v.*  
5 *Sessions*, 872 F.3d 976, 996 (9th Cir. 2017) - noting staggering detention costs).  
6 Indeed, Mr. Bayani was ready to prosecute his case as soon as he was detained.  
7 However, when Mr. Bayani was allowed to proceed, he asked at his May 17 hearing  
8 for an individual hearing. This was set five months later in October. His attorney  
9 became ill so his matter was reset for January 2, 2026. A change in judges required a  
10 reset to March 13, 2026. If that hearing were to take place, that would be 14 months  
11 of detention. However, that hearing will not take place. Judge Anderson announced  
12 that she will not be hearing detained cases in March and this case and all the others  
13 set for March on her calendar will have to be reset again. That constitutes ten  
14 months of delay by the government before his case can even begin to be heard.  
15 Individual hearings in the detention setting only allow for 2 hours. There is no  
16 possibility that Mr. Bayani case will be finished in those two hours. That means  
17 another continued date for the case, at least another 4 months after that. Should Mr.  
18 Bayani' case be granted, DHS is most likely to appeal and if it is not granted, Mr.  
19 Bayani will appeal. This adds at least another year to Mr. Bayani' case. Thus, the IJ's  
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1 decision will not be administratively final and he will remain subject to Section  
2 1225(b)(1)(B)(ii).

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

4 Mr. Bayani has a profound liberty interest in freedom from physical restraint  
5 (Morrissey v. Brewer, 408 U.S. 471 (1972)). The risk of erroneous deprivation is  
6 high without an individualized hearing. There is no sign that he is a danger to the  
7 community or a flight risk. Mr. Bayani attempted on December 15, 2025, to have a  
8 bond determination hearing. However, the court found that it lacked jurisdiction to  
9 entertain the motion.  
10

11 *Fiscal/Administrative Burden*

12 The burden of releasing Mr. Bayani is nil and the burden of providing a bond  
13 hearing is negligible compared to the substantial cost of detention  
14 (\$158/day/detainee) and the constitutional imperative. Release is fiscally prudent  
15 and administratively simple.  
16

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

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

4 Mr. Bayani has been detained since January 5, 2025. In addition to this being  
5 an “unreasonably prolonged” period, the lack of any individualized assessment or  
6 prospect for release makes the detention inherently punitive and unconstitutional  
7 under *Mathews*. As mentioned above, the delay in allowing his case to go forward  
8 and the delay in setting the individual hearing means that the final determination of  
9 his underlying case nearly a year away. Thus, the IJ’s decision will not be  
10 administratively final and he will remain subject to Section 1225(b)(1)(B)(ii).  
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14 **E. Mr. Bayani Has a Protected Liberty Interest and the *Mathews v.*  
15 *Eldridge* Balancing Test Tips in his Favor**

16 Under the test set forth in *Mathews*, this Court must consider the following  
17 three factors: “first, the private interest that will be affected by the official action;  
18 second, the risk of an erroneous deprivation of such interest through the procedures  
19 used, and the probative value, if any, of additional or substitute procedural  
20 safeguards; and finally the government’s interest, including the function involved  
21 and the fiscal and administrative burdens that the additional or substitute  
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1 procedural requirements would entail.” See *Mathews v. Eldridge*, 424 U.S. 319, 335  
2 (1976).

3 The *Mathews* factors all favor Mr. Bayani. The government’s interest in  
4 keeping Mr. Bayani in detention is very low, and when weighed against his  
5 significant private interest in his liberty, the scale tips sharply in favor of releasing  
6 Mr. Bayani from custody. Moreover, detention cannot have a punitive purpose.  
7 Respondents cannot plausibly assert an interest in continuing to detain Mr. Bayani  
8 after almost a year of detention. There is no indication of Mr. Bayani being a danger  
9 to the community or a flight risk.  
10

11 The government’s interest in detaining Mr. Bayani is extremely low at best.  
12 That ICE has a policy to make a minimum number of arrests each day under the new  
13 administration does not constitute a valid increase in the government’s interest in  
14 detaining him. Moreover, the “fiscal and administrative burdens” that release from  
15 custody would provide are nil. In fact, release from custody is far less costly than  
16 keeping Mr. Bayani detained. As the Ninth Circuit noted in 2017, which remains  
17 even more true today, “[t]he costs to the public of immigration detention are  
18 ‘staggering’: \$158 each day per detainee, amounting to a total daily cost of \$6.5  
19 million.” *Hernandez v. Session*, 872 F.3d 976, 996 (9th Cir. 2017).  
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22 **F. The balance tips in Mr. Bayani’s favor under the Lopez test as well.**  
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1 Respondents contend that applying the three-factor balancing test discussed  
2 in *Lopez v. Garland*, 631 F. Supp. 3d 870 (E.D. Cal. 2022) shows that Petitioner’s  
3 detention is not unreasonably prolonged. Courts in the Ninth Circuit have used  
4 various factor tests to determine whether due process requires a bond hearing in  
5 immigration detention cases, including the *Lopez* test. See e.g., *Loba L.M. v. Andrews*,  
6 No. 1:25-CV-00611 JLT SAB (HC), 2025 WL 3187577, at \*1 n.1 (E.D. Cal. Nov. 14,  
7 2025). In the *Lopez* test, the court considers “the total length of detention to date,  
8 the likely duration of future detention, and the delays in the removal proceedings  
9 caused by the petitioner and the government.” *Lopez*, 631 F. Supp. 3d at 879.  
10  
11 Petitioner has been in immigration detention since January 5, 2025, which is over  
12 one year. Courts have found detentions of similar and shorter duration without a  
13 bond hearing weigh toward a finding that they are unreasonable. See, e.g., *Sadeqi v.*  
14 *LaRose*, 2025 WL 3154520, at \*4 (finding detention of over eleven months weighs  
15 toward a finding of unreasonableness); *Tonoyan v. Andrews*, No. 1:25-CV-00815-SKO  
16 (HC), 2025 WL 3013684, at \*4 (E.D. Cal. Oct. 28, 2025) (over eleven months); *Lopez*,  
17 631 F. Supp. 3d at 879 (approximately one year); *Masood v. Barr*, No. 19-CV-07623-  
18 JD, 2020 WL 95633, at \*3 (N.D. Cal. Jan. 8, 2020) (nearly nine months); *Cabral v.*  
19 *Decker*, 331 F. Supp. 3d 255, 261 (S.D.N.Y. 2018) (over seven months). Therefore,  
20  
21 the Court should find the length of detention weighs in favor of Petitioner.  
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1 Next, the Court should consider the likely duration of future detention. Mr.  
2 Bayani asserts his case is set for an individual hearing on March 13, 2026. This  
3 hearing is only allotted two hours. His testimony and cross examination will take  
4 much longer than that. His case will have to be reset again with another four to six  
5 months wait. This could go on for quite a long time with no resolution. However,  
6 Judge Anderson announced when she set the matter that this was really just a  
7 placeholder as she would not be on the detained docket at that time and the matter  
8 would have to set again in front of a different judge. Even if the court reaches a  
9 decision either DHS or the petitioner will appeal. This will add at least six months to  
10 a year for resolution. Although it is unclear when removal proceedings will  
11 conclude, it will likely be a substantial amount of time. The Court should find this  
12 factor weighs in favor of Petitioner. Finally, the Court must consider whether delays  
13 in the removal proceedings were caused by Petitioner or the government. Currently,  
14 the longest delay seems to be from the government. The first individual hearing was  
15 set 5 months after the master. The next delay will be over six months once the case  
16 is reset before a new judge. There is potentially no end in sight to Mr. Bayani's  
17 detention. The Court must find this delay factor weighs slightly in favor of  
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20  
21 Petitioner.

22 **G. The Petition Meets All Habeas Rule 2(c) Requirements**  
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1 - Rule 2(c) Compliance: Petition "specifies all the grounds for relief" and  
2 "states the facts supporting each ground."

3 - Specific Factual Allegations:

4 Detention duration: Nearly 10 months as of January 2026.

5 No individualized assessment of flight risk or danger to community.

6 Government delays: Six months just to begin removal proceedings and  
7 another 4 months to set an individual hearing.

8 This court should find in the Petitioner's favor and grant the petition.

9  
10  
11 Dated: January 23, 2026

/s/Brian J. McGoldrick  
Brian J. McGoldrick  
Attorney for Petitioner

1 I, Brian J. McGoldrick, CERTIFY

2 I am over the age of 18 and not a party to this matter. My business address is 4916 Del Mar Avenue, San  
3 Diego, CA 92107. On January 23, 2026, I served a copy of this

4 **TRAVERSE TO PETITION FOR WRIT OF HABEAS CORPUS AND ORDER TO  
SHOW CAUSE**

5 by the method and to the parties listed below:

6 On January 23, 2026, I accessed the electronic mailing list for CM/ECF users in this case and  
7 representatives of all parties are CM/ECF users and are noticed as follows:

8 • **Janet A Cabral**

9 Janet.Cabral@usdoj.gov,mary.wiggins@usdoj.gov,efile.dkt.civ@usdoj.gov,USACAS.Habeas22  
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14 Counsel for Petitioner

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