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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

YUNDONG XIE

Petitioner,

v.

CHRISTOPHER LAROSE, warden of
Otay Mesa Detention Center
DANIEL A. BRIGHTMAN, San Diego
Field Office Director, Immigration and
Customs Enforcement and Removal
Operations (“ICE/ERO”);
TODD LYONS, Acting Director of
Immigration Customs Enforcement
 (“ICE”);
KRISTI NOEM, Secretary of the
Department of Homeland Security
 (“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-00529-CAB-DDC

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

[oral argument waived]

1 Petitioner Yundong Xie, replies to Respondents' Return, stating as follows:

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

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

4
5 Lastly, *Mezei*² also does not help the government as the government does not
6 contend that this case involves particularized national security risks or emergency
7 regulations, as in *Mezei*, 345 U.S. at 214-16. See *Jennings v. Rodriguez*, 583 U.S. 281,
8 340 (2018) (Breyer, J., dissenting); *Jean v. Nelson*, 472 U.S. 846, 872 (1985)
9 (Marshall, J., dissenting); *Mezei*, 345 U.S. at 217 (Black, J., dissenting).

10 Therefore, this Court should follow most courts, including *Sufiarov, supra*, and
11 including others in this district, and find that Mr. Xie is entitled to due process
12 protections beyond those provided by statute.
13

14 **B. The Fifth Amendment Applies to "All Persons," Including Mr. Xie**

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." Petitioner's liberty interest in freedom from physical restraint is profound
18 and protected. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Singh v. Holder*, 638 F.3d
19 1196, 1203 (9th Cir. 2011).
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24 ² 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 The Supreme court has long been solicitous of the constitutional rights of
2 noncitizens. *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) (“The fourteenth
3 amendment to the constitution is not confined to the protection of citizens.”). Both
4 “removable and inadmissible aliens are entitled to be free from detention that is
5 arbitrary or capricious.” *Zadvydas* at 721.
6

7 **C. Judicial Forum Required for Constitutional Claims**

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

15 **D. Mr. Xie’s Detention Has Become “Unreasonably Prolonged,” Which** 16 **Without a Bond Hearing Violates Due Process**

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

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

15
16 As a judge in this district assessed, “*Jennings* did not determine the
17 constitutional question at issue here—whether arriving aliens subject to prolonged
18 detention under 8 U.S.C § 1225(b) are entitled to a bond hearing as a matter of due
19 process.” *Kydyrali*, 499 F. Supp. 3d at 772 (citing *Jennings*, 138 S. Ct. at 851); see also
20 *German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 210 (3d Cir.
21 2020)(“*Jennings* ... left our framework for assessing as-applied constitutional
22 challenges intact”).
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1 Many other local courts have found detention at or less than one year gives
2 rise to due process concerns. *See, e.g., Hoyos Amado*, 2025 WL 3079052, at *5
3 (“Courts have found detention over seven months without a bond hearing weighs
4 toward a finding that it is unreasonable.”) (collecting cases); *Tanoyan v. Andrews*,
5 No. 1:25-CV-00815-SKO (HC), 2025 WL 3013684, at *4 (E.D. Cal. Oct. 28, 2025)
6 (“Petitioner has been detained approximately 11 months. This period ... qualifies as
7 prolonged.”); *Gao*, 2025 WL 2770633, at *5 (“The Court finds that Petitioner’s
8 detention for over 10 months without a bond hearing, in the context of the specific
9 circumstances described above, has become unreasonable and violates due
10 process.”); *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022) (“Petitioner
11 has been in immigration detention ... approximately one year. District court have
12 found shorter lengths of detention ... without a bond hearing to be unreasonable.”)
13 (collecting cases). Therefore, Mr. Xie’s prolonged detention without an
14 individualized bond hearing violates substantive due process. This Court must apply
15 the *Kydyrali* factors (recently applied by Judge Huie in *Mingzhi Gao*).

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18 **The *Kydyrali* factors favor the release of the Mr. Xie as follows:**

19 *Duration of Detention*

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21 First, Mr. Xie has been detained since January 5, 2025. This is an
22 “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
2 under *Mathews v. Eldridge*, 424 U.S. 319 (1976).

3 *Government's Interest*

4 Second, the government's interest is minimal. Respondents make no
5 allegation of 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).

9 Indeed, Mr. Xie was ready to prosecute his case as soon as he was detained. After
10 several master calendar hearings, his judge was changed. The new judge set the case
11 for another master and then an individual hearing for September 26, 2025. Mr. Xie's
12 attorney became ill and could not appear. This is no fault of Mr. Xie. His case was
13 reset for January 2, 2026. However, that hearing was cancelled by the government. A
14 new master was set and now Mr. Xie's individual hearing has been pushed out to
15 May 20, 2026. That will be 16 months after he was detained and held with no
16 evaluation of whether his detention is still warranted. Individual hearings in the
17 detention setting only allow for 2 hours. There is no possibility that Mr. Xie case will
18 be finished in those two hours. That means another continued date for the case, at
19 least another 4 months after that. Should Mr. Xie' case be granted, DHS is most
20 likely to appeal and if it is not granted, Mr. Xie will appeal. This adds at least another
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1 year to Mr. Xie' case. Thus, the IJ's decision will not be administratively final and he
2 will remain subject to Section 1225(b)(1)(B)(ii).

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

4 Mr. Xie 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.
8

9 *Fiscal/Administrative Burden*

10 The burden of releasing Mr. Xie is nil and the burden of providing a bond
11 hearing is negligible compared to the substantial cost of detention
12 (\$158/day/detainee) and the constitutional imperative. Release is fiscally prudent
13 and 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 Mr. Xie's flight risk
17 and dangerousness. The government's bare reliance on a statutory classification
18 (even if applicable) cannot substitute for the individualized determination required
19 by due process before depriving a person of liberty for a significant period.
20 (*Kydryali*, 499 F. Supp. 3d at 772; *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1106
21 (W.D. Wash. 2019)).
22

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

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

9
10 **E. Mr. Xie Has a Protected Liberty Interest and the *Mathews v. Eldridge***
11 **Balancing Test Tips in his Favor**
12

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

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

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

17 **F. The balance tips in Mr. Xie's favor under the Lopez test as well.**

18 Respondents contend that applying the three-factor balancing test discussed
19 in *Lopez v. Garland*, 631 F. Supp. 3d 870 (E.D. Cal. 2022) shows that Petitioner's
20 detention is not unreasonably prolonged. Courts in the Ninth Circuit have used
21 various factor tests to determine whether due process requires a bond hearing in
22 immigration detention cases, including the *Lopez* test. See e.g., *Loba L.M. v. Andrews*,
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1 No. 1:25-CV-00611 JLT SAB (HC), 2025 WL 3187577, at *1 n.1 (E.D. Cal. Nov. 14,
2 2025). In the *Lopez* test, the court considers “the total length of detention to date,
3 the likely duration of future detention, and the delays in the removal proceedings
4 caused by the petitioner and the government.” *Lopez*, 631 F. Supp. 3d at 879.

5
6 Petitioner has been in immigration detention since January 5, 2025, which is over
7 one year. Courts have found detentions of similar and shorter duration without a
8 bond hearing weigh toward a finding that they are unreasonable. See, e.g., *Sadeqi v.*
9 *LaRose*, 2025 WL 3154520, at *4 (finding detention of over eleven months weighs
10 toward a finding of unreasonableness); *Tonoyan v. Andrews*, No. 1:25-CV-00815-SKO
11 (HC), 2025 WL 3013684, at *4 (E.D. Cal. Oct. 28, 2025) (over eleven months); *Lopez*,
12 631 F. Supp. 3d at 879 (approximately one year); *Masood v. Barr*, No. 19-CV-07623-
13 JD, 2020 WL 95633, at *3 (N.D. Cal. Jan. 8, 2020) (nearly nine months); *Cabral v.*
14 *Decker*, 331 F. Supp. 3d 255, 261 (S.D.N.Y. 2018) (over seven months). Therefore,
15 the Court should find the length of detention weighs in favor of Petitioner.
16

17
18 Next, the Court should consider the likely duration of future detention. Mr. Xie
19 asserts his case is set for an individual hearing on May 20, 2026. This hearing is only
20 allotted two hours. His testimony and cross examination will take much longer than
21 that. His case will have to be reset again with another four to six months wait. This
22 could go on for quite a long time with no resolution. Even if the court reaches a
23 decision either DHS or the petitioner will appeal. This will add at least six months to
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1 a year for resolution. Although it is unclear when removal proceedings will
2 conclude, it will likely be a substantial amount of time. The Court should find this
3 factor weighs in favor of Petitioner. Finally, the Court must consider whether delays
4 in the removal proceedings were caused by Petitioner or the government. Currently,
5 the longest delay seems to be from the government. The longest delay is the five
6 months between the last master calendar hearing and the date of the individual
7 hearing. There is potentially no end in sight to Mr. Xie's detention. The Court must
8 find this delay factor weighs slightly in favor of Petitioner.
9

10 **G. The Petition Meets All Habeas Rule 2(c) Requirements**

11 - Rule 2(c) Compliance: Petition "specifies all the grounds for relief" and
12 "states the facts supporting each ground."
13

14 - Specific Factual Allegations:

15 Detention duration: 13months as of February 2026.

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

17 Government delays: Five months just to between his last master
18 calendar hearing and his scheduled individual hearing.
19

20 This court should find in the Petitioner's favor and grant the petition.
21

22 Dated: February 10, 2026

23 /s/Brian J. McGoldrick
24 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 February 10, 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 February 10, 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 • **Cindy M. Cipriani**
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10 /s/Brian J. McGoldrick
11 Brian J. McGoldrick, Esq.
12 Counsel for Petitioner

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