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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

MIZANUR RAHMAN, Petitioner-Plaintiff, v. CHRISTOPHER J. LAROSE, et al. Respondents-Defendants.	Case No.: 26-cv-0630-BAS-BLM **PETITIONER'S TRAVERSE IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS**

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

4 Respondents argue that under the Supreme Court's decision in Department of
5 Homeland Security v. Thuraissigiam, 591 U.S. 103 (2020), Petitioner as an arriving alien
6 has no due process rights "other than those afforded by statute.". Dkt. 4, at 6. In
7 Thuraissigiam, the Supreme Court rejected a habeas petitioner's argument that the due
8 process clause conferred rights to challenge his order of expedited removal beyond those
9 established by Congress, stating that "an alien at the threshold of initial entry cannot
10 claim any greater rights under the Due Process Clause." 591 U.S. at 107. The petitioner in
11 that case had "attempted to enter the country illegally and was apprehended just 25 yards
12 from the border." Id. The Supreme Court determined that the "political department of the
13 government" had plenary authority to admit or exclude aliens seeking initial entry, and
14 thus "an alien in respondent's position has only those rights regarding admission that
15 Congress has provided by statute." Id. at 139-40. Respondents argue that because
16 Rahman is an "arriving alien," due process provides him nothing beyond the mandatory
17 detention scheme established by Section 1225(b)(1). Id.

18 Although following the Supreme Court's decision in Thuraissigiam, some district
19 courts have adopted the reasoning to dismiss or deny habeas petitions in the context of

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

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

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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.")

13, 2025); Elikaei v. Larose, 3:25-cv-03219-DMS-AHG, (S.D. Cal. Dec. 10, 2025); Dogan v. Larose, 3:25-cv-03525-DMS-BJW, (S.D. Cal. Dec. 23, 2025); Ramos Villanueva v. Larose, 3:25-cv-03679-CAB-SBC, (S.D. Cal. Jan. 26, 2026); Safinejad v. Larose, 3:25-cv-00531-JES-AHG, (S.D. Cal. Feb. 3, 2026).

In those cases, this Court agreed with the majority position that a petitioner detained under Section 1225(b)(1) may assert a due process challenge to prolonged mandatory detention without a bond hearing. It agreed with those district courts that interpret Thuraissigiam as circumscribing an arriving alien's due process rights to admission, rather than limiting that person's ability to challenge detention. See A.L. v. Oddo, 761 F. Supp. 3d 822, 825 (W.D. Pa. 2025) ("Nowhere in [Thuraissigiam] did the Supreme Court suggest that arriving aliens being held under § 1225(b) may be held indefinitely and unreasonably with no due process implications, nor that such aliens have no due process rights whatsoever."); Hernandez v. Wofford, No. 25-cv-986-KES-CDB (HC), 2025 WL 2420390, at *3 (E.D. Cal. Aug. 21, 2025) ("Although the Supreme Court has described Congress's power over the 'policies and rules for exclusion of aliens' as 'plenary,' and held that this court must generally 'defer to Executive and Legislative Branch decision-making in that area,' it is well-established that the Due Process Clause stands as a significant constraint on the manner in which the political branches may exercise their plenary authority'—through detention or otherwise.") (citations omitted); Padilla v. ICE, 704 F. Supp. 3d 1163, 1171-72 (W.D. Wash. 2023) ("The holding in

Thuraissigiam does not foreclose Plaintiffs' due process claims which seek to vindicate a right to a bond hearing with certain procedural protections.").

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

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

B. The Fifth Amendment Applies to "All Persons," Including Rahman

The Fifth Amendment's Due Process Clause applies to "all persons" within the United States. This protection is not contingent on immigration status or the "entry fiction." Rahman's liberty interest in freedom from physical restraint is profound and protected. Zadvydas v. Davis, 533 U.S. 678, 690 (2001); Singh v. Holder, 638 F.3d 1196, 1203 (9th Cir. 2011). The Supreme Court has long been solicitous of the constitutional rights of noncitizens. Yick Wo v. Hopkins, 118 U.S. 356, 369 (1886) ("The fourteenth amendment to the constitution is not confined to the protection of citizens."). Both

[2] 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 "removable and inadmissible aliens are entitled to be free from detention that is arbitrary
2 or capricious." Zadvydas at 721.
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4 ### C. Judicial Forum Required for Constitutional Claims

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

13 Even before Jennings, many courts recognized detention became unreasonably
14 prolonged at six months. Appling the canon of "constitutional avoidance," the Ninth
15 Circuit has ruled that "[a]s a general matter, detention is prolonged when it has lasted six
16 months and is expected to continue more than minimally beyond six months." Diouf v.
17 Napolitano, 634 F. 3d 1081, 1092 (9th Cir. 2011). Specifically addressing mandatory
18 detention, the court found detention at six months was "prolonged" requiring an
19 "automatic individualized bond hearing[]" at which the government bore the burden of
20 persuasion as to why detention should continue. Rodriguez v. Robbins, 804 F.3d 1060
21 (9th Cr. 2015), *rev'd sub nom.* Jennings v. Rodriguez, 583 U.S. 281 (2018).
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1 Other circuits had similarly adopted a six-month benchmark for when detention
2 becomes constitutionally problematic. In Lora v. Shanahan, 804 F.3d 601 (2nd Cir.
3 2015), *cert. granted, judgment vacated*, 583 U.S. 1165 (2018), the court observed that
4 "every other circuit to have considered this issue" determined that bond hearings were
5 required after six months. Lora v. Shanahan at 606. See also Ly v. Hansen, 351 F.3d 263,
6 275 (6th Cir. 2003). In 2018, in Jennings, the Court reversed the Rodriguez holding that
7 automatic bond hearings are mandated every six months as a matter of constitutional
8 avoidance. But it left open the application of due process as *applied* in specific cases.
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10 As this Court assessed, "Jennings did not determine the constitutional question at
11 issue here—whether arriving aliens subject to prolonged detention under 8 U.S.C §
12 1225(b) are entitled to a bond hearing as a matter of due process." Kydyrali, 499 F. Supp.
13 3d at 772 (citing Jennings, 138 S. Ct. at 851); see also German Santos v. Warden Pike
14 Cnty. Corr. Facility, 965 F.3d 203, 210 (3d Cir. 2020)("Jennings … left our framework
15 for assessing as-applied constitutional challenges intact").
16
17 Therefore, Rahman's detention of over fourteen months and counting, without an
18 individualized bond hearing, is unreasonable prolonged and violates substantive due
19 process. This Court should apply the Kydyrali factors (recently applied by Judge Huie in
20 *Mingzhi Gao* as well as by other judges in this district subsequently as cited above).
21
22 The Kydyrali factors favor the release of the Rahman as follows:
23 *Duration of Detention*
24

First, Rahman has been detained since November 29, 2024. This is an "unreasonably prolonged" period and the lack of any individualized assessment or prospect for release makes the detention inherently punitive and unconstitutional under Mathews v. Eldridge, 424 U.S. 319 (1976).

Government's Interest

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

Indeed, the government provides no in support of its contention that "the majority of the delay" is attributable to Rahman. Rahman's hearings were rescheduled on multiple occasions by the court. Rahman complied by all the filing deadlines that the Court set, and he timely filed his asylum application as well as all the supporting documentations. After the IJ denied all forms of relief requested on February 4, 2026 and ordered Rahman removed, he reserved appeal and is diligently working on filing his appeal. Therefore, he is not subject to an administratively final order of removal. It is unknown when the BIA will complete its adjudication of the appeal, and in the event the BIA affirms the IJ's decision, Mr. Rahman will file a petition for review before the Ninth Circuit Court of Appeals, which could take many additional months if not years to be completed. If the

1 BIA reverses the IJ, then his case will likely be remanded back to a the IJ which will take
2 several additional months if not over a year. Therefore, the fact that Mr. Rahman was
3 ordered removed on February 4, 2026, and he continued sot remain detained further
4 supporters the second Banda factor (length of future detention). This period is well
5
6 beyond the presumptively reasonable six-month period set forth in Zadvydas, *533 U.S.* at
7 701. Courts consistently find detention beyond this threshold triggers due process
8 scrutiny. See Kydyrali, 499 F.Supp. 3d at 774–75.

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

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

16 The burden of releasing Rahman is nil and the burden of providing a bond hearing
17 is negligible compared to the substantial cost of detention ($158/day/detainee) and the
18 constitutional imperative. Release is fiscally prudent and administratively simple.
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Finally, under Mathews, the balance of factors tips sharply in favor of – at a
20
21 minimum – requiring an individualized bond hearing to assess Rahman's flight risk and
22 dangerousness. The government's bare reliance on a statutory classification (even if
23 applicable) cannot substitute for the individualized determination required by due process
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1 before depriving a person of liberty for a significant period. (*Kydryali*, 499 F. Supp. 3d at
2 772; *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1106 (W.D. Wash. 2019)).
3 *Duration of Detention / Likelihood of Final Order of Removal*
4
5 Rahman has been detained since November 29, 2024. In addition to this being an
6 "unreasonably prolonged" period, the lack of any individualized assessment or prospect
7 for release, coupled with Rahman's psychological condition makes the detention
8 inherently punitive and unconstitutional under Mathews, 424 U.S. 319 (1976). As
9 mentioned above, even though the IJ has ordered removal, Rahman's proceedings are still
10 pending as he has reserved appeal and is working on preparing his appeal.
11
12 **A. Rahman Has a Protected Liberty Interest and the *Mathews v. Eldridge* Balancing Test Tips in his Favor**
13 Under the test set forth in Mathews, this Court should consider the following three
14 factors: "first, the private interest that will be affected by the official action; second, the
15 risk of an erroneous deprivation of such interest through the procedures used, and the
16 probative value, if any, of additional or substitute procedural safeguards; and finally the
17 government's interest, including the function involved and the fiscal and administrative
18 burdens that the additional or substitute procedural requirements would entail." See
19 Mathews v. Eldridge, 424 U.S. 319, 335 (1976).
20
21 The Matthews factors all favor Rahman. The government's interest in keeping
22 Rahman in detention is very low, and when weighed against his significant private
23 interest in his liberty, the scale tips sharply in favor of releasing him from custody.
24

Moreover, detention cannot have a punitive purpose. Respondents cannot plausibly assert an interest in continuing to detain Rahman after almost a year of detention. There is no evidence or argument presented by the Respondents of Rahman being a danger to the community or a flight risk.

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

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

- Rule 2(c) Compliance: Petition "specifies all the grounds for relief" and "states the facts supporting each ground."
- Specific Factual Allegations:
  - Detention duration: 12 months as of January 9, 2026.
  - No individualized assessment of flight risk or danger to community.
  - Government delays: Multiple continuances by the government, administrative appeal delay.

1 Dated: February 16, 2026,

2 By: *<u>/s/ Bashir Ghazialam</u>*
3 Bashir Ghazialam
Attorney for Petitioner
4 Email: bg@lobg.net

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CERTIFICATE OF SERVICE

2 I hereby certify that on February 16, 2026, I caused the foregoing document to be
3 electronically filed with the Clerk of the Court for the United States District Court for
4 the Southern District of California by using the appellate CM/ECF system. Participants
5 in the case are registered CM/ECF users and service will be accomplished by the
6 appellate CM/ECF system.
7
8 Executed on: February 16, 2026

<u>/s/ Bashir Ghazialam</u>
Bashir Ghazialam

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