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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 BAKHTIAR SAHAK,

12 Petitioner-Plaintiff,

13 v.

14 CHRISTOPHER J. LAROSE, et al.

15 Respondents-Defendants.
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Case No.: 3:26-cv-02292-LEK-SBC

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

1 **A. The Due Process Clause Limits the Duration of Mandatory Immigration**
2 **Detention**

3 Supreme Court jurisprudence makes clear that prolonged immigration detention
4 without a bond hearing raises serious constitutional concerns. In *Zadvydas*, the Court
5 addressed a challenge to 8 U.S.C. § 1231(a)(6), which appeared to authorize the indefinite
6 detention of noncitizens subject to final removal orders. 533 U.S. at 682. The Court held
7 that interpreting the statute to “permit[] indefinite detention . . . would raise a serious
8 constitutional problem” because “[f]reedom from imprisonment—from government
9 custody, detention, or other forms of physical restraint—lies at the heart of the liberty that
10 [the Due Process] Clause protects.” *Id.* at 690. To avoid that constitutional concern, the
11 Court construed the statute to contain “an implicit ‘[presumptively] reasonable time’
12 limitation” of six months. *Id.* at 682, 701.

14 Denying Sahak a forum to challenge his prolonged detention would raise a “serious
15 constitutional question” under *Webster v. Doe*, 486 U.S. 592, 603 (1988). As a judge in
16 this district recognized in *Domingo-Ros v. Archambeault*, No. 25-cv-1208-DMS-DEB,
17 2025 WL 27541, at *2 (S.D. Cal. May 18, 2025), statutes cannot be construed to deny any
18 judicial forum for a colorable constitutional claim. Sahak’s claim that his detention
19 violates substantive due process is precisely such a claim.

21 Subsequent Supreme Court cases have declined to impose specific time limits on
22 immigration statutes that mandate detention but have upheld the *Zadvydas* principle that
23 the Constitution imposes limits on indefinite detention without a bond hearing. *Demore v.*
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1 *Kim*, 538 U.S. 510 (2003), involved a due process challenge to § 1226(c), which mandates
2 detention during removal proceedings for noncitizens convicted of certain crimes. In
3 *Demore*, the Supreme Court distinguished *Zadvydas* on the ground that, unlike the
4 “‘indefinite’ and ‘potentially permanent’” detention at issue there, detention under §
5 1226(c) has an “obvious termination point” —the conclusion of removal proceedings—
6 and typically ranged from forty-seven days to four months. *Id.* at 528–29. Because of the
7 finite and relatively brief duration of § 1226(c) detention, the Court concluded that the
8 statute did not on its face violate the Due Process Clause. See *id.* at 529–31. Justice
9 Kennedy’s concurrence underscored, however, that due process may require “an
10 individualized determination as to [a noncitizen’s] risk of flight and dangerousness if the
11 continued detention [becomes] unreasonable or unjustified.” *Id.* at 532.
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14 In *Jennings*, the Supreme Court rejected the Ninth Circuit’s conclusion that certain
15 immigration detention statutes that mandate detention implicitly required bond hearings
16 after six months. 583 U.S. at 286. In doing so, however, the Court left open the underlying
17 questions of whether the Due Process Clause independently imposes limits on prolonged
18 detention without a bond hearing, and when those limits are exceeded. See *id.*; *Rodriguez*
19 *v. Marin*, 909 F.3d 252, 255 (9th Cir. 2018).
20

21 Consistent with these Supreme Court cases, the Ninth Circuit has repeatedly
22 recognized that statutes authorizing prolonged immigration detention without a bond
23 hearing raise “serious constitutional concerns.” *Casas-Castrillon v. Dep’t of Homeland*
24 *Sec.*, 535 F.3d 942, 944, 950 (9th Cir. 2008), abrogated on other grounds by *Jennings*, 583

1 U.S. 281 (finding that “prolonged detention [under § 1226(a)] must be accompanied by . .
2 .a hearing to establish whether releasing the alien would pose a danger to the community
3 or a flight risk”); *Diouf v. Napolitano* (“*Diouf II*”), 634 F.3d 1081, 1084 (9th Cir. 2011)
4 (“We hold that individuals detained under § 1231(a)(6) are entitled to the same procedural
5 safeguards against prolonged detention as individuals detained under § 1226(a). ”); *see*
6 *also Rodriguez v. Robbins*, 715 F.3d 1127, 1137, 1144 (9th Cir. 2013) (prolonged
7 detention under §§ 1225(b) and 1226(c) without a bond hearing would be “constitutionally
8 doubtful”); *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1114 (W.D. Wash. 2019)
9 (collecting Ninth Circuit cases recognizing that prolonged detention without adequate
10 procedural protections would raise “serious constitutional concerns”).
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13 In these cases, the Court emphasized that the constitutional concerns arise from the
14 extended duration of detention combined with the absence of opportunity to challenge the
15 government’s justifications for continued confinement. Taken together, these Supreme
16 Court and Ninth Circuit decisions make clear that trial courts must assess on a case-by-
17 case basis whether detention without a bond hearing has exceeded constitutional limits,
18 regardless of whether such detention is mandated by statute. Contrary to Respondents’
19 assertions, neither Sahak’s purported status as an “arriving alien” nor his detention under §
20 1225(b) forecloses a due process challenge to the lawfulness of his detention. *DHS v.*
21 *Thuraissigiam*, 591 U.S. 103, 140 (2020), the Supreme Court case that the government
22 relies on to make this argument, rejected an asylum seeker’s claim that the Due Process
23 Clause entitled him to additional avenues to challenge his expedited removal beyond those
24

1 provided by statute. *Thuraissigiam* held that (1) the asylum seeker’s claim fell outside the
2 scope of habeas jurisdiction because he sought “the opportunity to remain lawfully in the
3 United States” rather than release from custody; and (2) the asylum seeker was not entitled
4 to additional process beyond what the detention statute affords for contesting removability.
5 *See id.* at 119, 140.

7 This case is different. Here, Sahak does not invoke due process to challenge the
8 outcome of his removal proceedings or seek additional procedural steps to appeal his
9 removability. Instead, he seeks relief from detention pending the resolution of those
10 proceedings—a request squarely within the traditional scope of habeas jurisdiction. *See*
11 *Preiser*, 411 U.S. at 484 (“[T]he essence of habeas corpus is an attack by a person in
12 custody upon the legality of that custody, and . . . the traditional function of the writ is to
13 secure release from illegal custody.”). Accordingly, consistent with the many district
14 courts that have addressed this issue, this Court should conclude that Sahak may invoke
15 due process challenges to the lawfulness of his prolonged detention without a bond
16 hearing. *See, e.g., A.L. v. Oddo*, 761 F. Supp. 3d 822, 825 (W.D. Pa. 2025) (“Nowhere in
17 [*Thuraissigiam*] did the Supreme Court suggest that arriving aliens being held under §
18 1225(b) may be held indefinitely and unreasonably with no due process implications, nor
19 that such aliens have no due process rights whatsoever.”); *Sadeqi v. LaRose*, 809 F. Supp.
20 3d 1090, 1093 (S.D. Cal. 2025) (collecting cases).

23 Recently, courts in this district have applied the same reasoning as the majority of
24 courts, holding that a petitioner detained under Section 1225(b)(1) may assert a due

1 process challenge to prolonged mandatory detention. *Mingzhi Gao v. Larose*, 25-cv-2084-
2 RSH-SBC, 2025 WL 495253 (S.D. Cal. Sep. 26, 2025); *Sadeqi v. Larose*, 25-cv-2587-
3 RSH-BJW, (S.D. Cal. Nov. 12, 2025); *Faizi v. Larose*, 25-cv-2974-JO-MSB, (S.D. Cal.
4 Nov. 13, 2025); *Elikaei v. Larose*, 3:25-cv-03219-DMS-AHG, (S.D. Cal. Dec. 10, 2025);
5 *Dogan v. Larose*, 3:25-cv-03525-DMS-BJW, (S.D. Cal. Dec. 23, 2025); *Ramos Villanueva*
6 *v. Larose*, 3:25-cv-03679-CAB-SBC, (S.D. Cal. Jan. 26, 2026); *Safinejad v. Larose*, 3:25-
7 cv-00531-JES-AHG, (S.D. Cal. Feb. 3, 2026) (collecting cases).

9 Lastly, *Mezei*¹ 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., dissenting); *Jean*
12 *v. Nelson*, 472 U.S. 846, 872 (1985) (Marshall, J., dissenting); *Mezei*, 345 U.S. at 217
13 (Black, J., dissenting). The government has failed to articulate any particularized national
14 security risks that Petitioner may pose.

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

18 Sahak’s prolonged detention without a bond hearing has violated his right to due
19 process—under the balancing framework set forth in *Mathews v. Eldridge*, 424 U.S. 319,
20 321 (1976). See *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (noting
21 courts in the Ninth Circuit “have regularly applied *Mathews* to due process challenges to
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23 ¹ 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 removal proceedings”); *Aceros v. Kaiser*, No. 25-cv-06924-EMC, 2025 WL 2637503, at
2 *5 (N.D. Cal. Sept. 12, 2025) (collecting cases applying *Mathews* in this context). Under
3 that framework, courts consider (1) the private interest affected by the government action;
4 (2) the risk of erroneous deprivation of that interest under the procedures used; and (3) the
5 government’s interest, including the fiscal and administrative burdens that additional
6 procedures would entail. *See id.* at *6. In cases involving prolonged immigration detention
7 without a bond hearing, only certain of these factors require individualized analysis.
8

9 Across the board, the private interest at stake will be the noncitizen’s fundamental
10 interest in freedom from physical restraint. *See Hernandez v. Sessions*, 872 F.3d 976, 990
11 (9th Cir. 2017). And where the government has provided no process to determine whether
12 continued detention is justified, the risk of erroneously depriving an “individual’s
13 constitutionally protected interest in avoiding physical restraint” is obvious. *Singh v.*
14 *Andrews*, 803 F. Supp. 3d 1035, 1047 (E.D. Cal. 2025) (*quoting Zadvydas*, 533 U.S. at
15 690, emphasis omitted). The remaining inquiry, therefore, focuses on the extent of the
16 government’s intrusion on Sahak’s liberty interest and the government’s interest in
17 continuing that detention without a bond hearing.
18

19 In determining the magnitude of the government’s incursion into Sahak’s
20 individual liberty, courts examine both the duration of his detention to date and his
21 likely future detention. *Demore*, 538 U.S. at 529–30 (considering the expected duration of
22 confinement in deciding whether certain statutory detentions without a bond hearing
23 exceeded constitutional limits); *see also Banda*, 385 F. Supp. 3d at 1120 (collecting cases
24

1 evaluating the likely duration of confinement in determining whether detention without a
2 bond hearing violated due process). Here, Sahak has been detained since September 2025,
3 a period of over seven months as of the filing of his petition. This substantial period of
4 detention—caused largely by administrative delays outside his control, including
5 continuances due to docket congestion and the abrupt cancellation of his previously
6 scheduled individual merits hearing—is likely to be followed by additional months or
7 years of administrative review before the Board of Immigration Appeals (“BIA”) and
8 potential judicial review in the Ninth Circuit.

10 Even before *Jennings*, many courts recognized detention became unreasonably
11 prolonged at six months. Applying the canon of “constitutional avoidance,” the Ninth
12 Circuit has ruled that “[a]s a general matter, detention is prolonged when it has lasted six
13 months and is expected to continue more than minimally beyond six months.” *Diouf v.*
14 *Napolitano*, 634 F. 3d 1081, 1092 (9th Cir. 2011). Specifically addressing mandatory
15 detention, the court found detention at six months was “prolonged” requiring an
16 “automatic individualized bond hearing[.]” at which the government bore the burden of
17 persuasion as to why detention should continue. *Rodriguez v. Robbins*, 804 F.3d 1060 (9th
18 Cr. 2015), *rev’d sub nom. Jennings v. Rodriguez*, 583 U.S. 281 (2018).

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. 2015),
23 *cert. granted, judgment vacated*, 583 U.S. 1165 (2018), the court observed that “every
24 other circuit to have considered this issue” determined that bond hearings were required

1 after six months. *Lora v. Shanahan* at 606. See also *Ly v. Hansen*, 351 F.3d 263, 275 (6th
2 Cir. 2003). In 2018, in *Jennings*, the Court reversed the *Rodriguez* holding that automatic
3 bond hearings are mandated every six months as a matter of constitutional avoidance. But
4 it left open the application of due process as *applied* in specific cases.
5

6 The government has not demonstrated that its interests in detaining Sahak without a
7 bond hearing outweigh the risk of wrongfully subjecting an individual to a liberty
8 deprivation of this magnitude. In assessing the government's interest, the Court weighs the
9 regulatory "function involved and the fiscal and administrative burdens that the additional
10 or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335. The
11 government's regulatory interests in civil immigration detention include ensuring a
12 noncitizen's appearance at removal proceedings and protecting the public. See *Zadvydas*,
13 533 U.S. at 690. Any civil detention must "bear some reasonable relation" to these
14 regulatory purposes. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). Here, the government
15 neither has a regulatory interest in detaining Sahak nor faces fiscal and administrative
16 burdens that justify withholding a bond hearing.
17

18 Sahak has no criminal history, does not pose a danger to the community, or present
19 any flight risk, and the government has not articulated any other individualized
20 justification for his continued detention. In fact, by previously releasing him on about
21 January 19, 2022 on conditional parole pursuant after a determination that he was neither a
22 flight risk nor a danger to the community that he could not be released on conditional
23 parole subject to a \$5,000.00 ICE bond payment, the government has already made a
24

1 determination that Sahak is not a flight risk or a danger to the community. And following
2 his previous release, nothing has changed that indicates that he has now become a flight
3 risk or a danger to the community.

4 Sahak has resided in this country for over four years, has violated no laws, and has
5 complied with all conditions of his previous release. In fact, Sahak was gainfully
6 employed and had built extensive community ties following his release over four years ago
7 and has demonstrated that he is in fact not a flight risk or a danger to the community.

8 Moreover, Sahak's present health conditions and the facility's inability or lack of capacity
9 to address those conditions further support his prolonged detention claim. See *Banda v.*
10 *McAleenan*, 385 F. Supp. 3d 1099 (W.D. Wash. 2019) (one of the *Banda* six-factor
11 balancing test is "conditions of detention."). Nor has the government argued or provided
12 any evidence regarding the administrative or fiscal burdens that a bond hearing would
13 entail.² See Gov't Opp. Yet Sahak has been confined for nearly eight months and counting
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18 ² As the Ninth Circuit has acknowledged, the cost to the public of detaining noncitizens is
19 "staggering," *Hernandez*, 872 F.3d at 996—an average of \$187.48 per adult detainee per
20 day as of fiscal year 2023. U.S. Immigration and Customs Enforcement, *Fiscal Year 2025*
21 *Congressional Justification* 26 (2024), https://www.dhs.gov/sites/default/files/2024-04/2024_0308_us_immigration_and_customs_enforcement.pdf (last visited Apr. 23,
22 2026). With more than 72,000 individuals in ICE custody nationwide as of January 2026,
23 the aggregate cost of immigration detention amounts to \$13.50 million per day, or roughly
24 \$4.93 billion annually. See U.S. Immigration and Customs Enforcement, *Detention FY*
2026 YTD, Alternatives to Detention FY 2026 YTD and Facilities FY 2026 YTD, Footnotes
(2026), <https://www.ice.gov/detain/detention-management> (ICLOS and detainees tab, total
at end of January) (last visited Feb. 16, 2026). By comparison, the cost and burden of
providing a bond hearing is "minimal." *Doe v. Becerra*, 787 F. Supp. 3d 1083, 1094 (E.D.
Cal. 2025). The government has long afforded noncitizens bond hearings pursuant to 8

1 and may remain detained for months or years longer while his removal proceedings—
2 which have been repeatedly delayed through no fault of his ow. Under these
3 circumstances, Sahak has suffered and will continue to suffer a substantial deprivation of
4 liberty with no opportunity to contest his detention, despite the absence of any legitimate
5 government interest to justify this deprivation.
6

7 Accordingly, the Court should find that Petitioner’s detention had become
8 unreasonably prolonged in violation of the Due Process Clause of the Fifth Amendment
9 and order Petitioner’s immediate release from custody subject to the conditions of his
10 preexisting release; and order that, prior to any re-detention of Petitioner, Petitioner
11 receive notice of the reasons for revocation of his conditional parole and a hearing before a
12 neutral decisionmaker to determine whether detention is warranted.
13

14 In the alternative, the Court should order an individualized bond hearing before a
15 neutral immigration judge forthwith, and to justify any continued detention, the
16 government must carry the burden to “prove by clear and convincing evidence that an
17 alien is a flight risk or a danger to the community to justify denial of bond.” *Singh v.*
18 *Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011), abrogated on other grounds by *Jennings*, 583
19 U.S. 281; *Gao*, 805 F. Supp. 3d at 1112 (explaining that “the substantial liberty interest at
20 stake” in a prolonged detention case warranted placing the burden on the government at a
21 bond hearing) (citation omitted).
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U.S.C. § 1226(a), and DHS has an established framework for doing so that it can readily
apply here. *See Hyppolite v. Noem*, 808 F. Supp. 3d 474, 493 (E.D.N.Y. 2025).

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Dated: April 27, 2026,

By: /s/ Bashir Ghazialam
Bashir Ghazialam
Attorney for Petitioner
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on April 27, 2026, I caused the foregoing document to be
3 electronically filed with the Clerk of the Court for the United States District Court for the
4 Southern District of California by using the appellate CM/ECF system. Participants in
5 the case are registered CM/ECF users and service will be accomplished by the appellate
6 CM/ECF system.
7

8 Executed on: April 27, 2026

/s/ Bashir Ghazialam
Bashir Ghazialam

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