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9 **UNITED STATES DISTRICT COURT**  
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 BEJTOWAL TEMESGEN,

Case No.: 26-cv-2309-BJC

12 Petitioner,

13 v.

**Traverse in support of  
petition  
for writ of habeas corpus**

14 CHRISTOPHER LAROSE, Warden at  
15 Otay Mesa Detention Center,

16 Respondent.

17 **INTRODUCTION**

18 Bejtowal Temesgen has been detained pending his immigration  
19 proceedings for nearly eight months under the mandatory detention provisions of  
20 8 U.S.C. § 1225(b)(1)(B)(ii). Contrary to Respondents' arguments,  
21 Mr. Temesgen's detention absent an individualized assessment of the need to  
22 detain him is now unreasonably prolonged. "Arbitrary civil detention is not a  
23 feature of our American government." *Rodriguez v. Marin*, 909 F.3d 252, 256  
24 (9th Cir. 2018). This Court should "join[] the majority of courts across the  
25 country in concluding that [his] unreasonably prolonged detention under 8 U.S.C.  
26 § 1225(b) without an individualized bond hearing violates due process." *Kydyrali*  
27 *v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020) (Battaglia, J.). Mr. Temesgen  
28 should be ordered released under the Due Process Clause.

//

1 **STATEMENT OF RELEVANT FACTS**

2 Mr. Temesgen is an Ethiopian national. Exhibit A, Decl. of Bejtowal  
3 Temesgen at ¶ 1. He faces political and ethnic persecution in Ethiopia. *Id.*  
4 Mr. Temesgen entered the United States on September 8, 2025, to seek asylum  
5 here. *Id.* at ¶ 2. He was immediately detained and has been in detention while  
6 fighting his immigration case for nearly eight months. *Id.* at ¶¶ 2–3. He has never  
7 received a bond hearing. *Id.* at ¶ 3.

8 Mr. Temesgen was denied asylum by the immigration judge (“IJ”) on  
9 March 11, 2026. *Id.* at ¶ 4. He timely filed is appeal to the Board of Immigration  
10 Appeals (“BIA”) on March 16, 2026. *Id.* at ¶ 5. His appeal is still pending. *Id.*

11 Mr. Temesgen is having a very difficult time in detention at the Otay Mesa  
12 Detention Center (“OMDC”). *Id.* at ¶ 7. He is suffering from insomnia and is  
13 unable to communicate with his family. *Id.* All of this is taking a toll on his  
14 mental health. *Id.*

15 **I. The Fifth Amendment’s Due Process Clause prohibits prolonged**  
16 **immigration detention without a bond hearing, contrary to**  
17 **Respondents’ arguments.**

18 Mr. Temesgen’s habeas petition raises a claim that the Fifth Amendment’s  
19 Due Process Clause countermands the government’s statutory authority to detain  
20 immigrants without bond hearings when that detention becomes prolonged.

21 As Respondents note, Mr. Temesgen is detained under one such statute, 8  
22 U.S.C. § 1225(b). “Section 1225 applies to ‘applicants for admission’—  
23 noncitizens who ‘arrive[] in the United States,’ or are ‘present’ in the United  
24 States but have ‘not been admitted.’” *Banda v. McAleenan*, 385 F. Supp. 3d 1099,  
25 1111 (W.D. Wash. 2019). It “applies to, among others, noncitizens initially  
26 determined to be inadmissible because of . . . lack of valid documentation.” *Id.*  
27 That includes persons who, like Mr. Temesgen, make credible asylum and other  
28 fear-based claims whose asylum case remains pending. *See* 8 U.S.C.  
§ 1225(b)(1)(B)(ii).

1 In years past, the Ninth Circuit applied the constitutional avoidance canon  
2 to hold that § 1225(b) implicitly entitled detained immigrants to bond hearings  
3 every six months. *Rodriguez v. Robbins*, 804 F.3d 1060, 1087–89 (9th Cir. 2015).  
4 But the Supreme Court overruled that precedent in *Jennings v. Rodriguez*, holding  
5 that the statute does not entitle detainees to bond hearings or otherwise impose  
6 “any limit on the length of detention.” 583 U.S. 281, 297 (2018). *Jennings* did not  
7 address whether prolonged, mandatory detention without bond hearings violates  
8 due process. *Id.* at 312.<sup>1</sup> “In the wake of *Jennings*, district courts have grappled  
9 with how to address due process challenges to prolonged mandatory detention  
10 under § 1225(b).” *Banda*, 385 F. Supp. 3d at 1116.

11 But after a full evaluation, “[n]early all district courts that have considered  
12 the issue agree that prolonged mandatory detention pending removal proceedings,  
13 without a bond hearing, will—at some point—violate the right to due process.”  
14 *Id.* (cleaned up) (collecting cases); accord *Amado v. U.S. Dep’t of Justice*, No. 25-  
15 cv-2684-LL-DDL, 2025 WL 3079052, \*3–\*5 (S.D. Cal. Nov. 4, 2025). Indeed,  
16 the Ninth Circuit has “grave doubts that any statute that allows for arbitrary  
17 prolonged detention without any process is constitutional or that those who  
18 founded our democracy precisely to protect against the government’s arbitrary  
19 deprivation of liberty would have thought so.” *Rodriguez*, 909 F.3d at 256–57.

20 Thus, this Court should hold that “a noncitizen detained under § 1225(b)  
21 for a prolonged period without an individualized bond hearing may assert a  
22 constitutional right to due process.” *Amado*, 2025 WL 3079052 at \*4 (collecting  
23 cases).

24 As relevant to that claim, Respondents contend that two Supreme Court  
25 precedents foreclose due process challenges in this context. First, Respondents

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27 <sup>1</sup> The Supreme Court’s later decision in *Dep’t of Homeland Sec. v. Thuraissigiam*,  
28 591 U.S. 103 (2020), also poses no barrier to granting relief on this detention-based  
due process claim. See *Lopez-Arevelo v. Ripa*, No. EP-25-cv-337-KC, 2025 WL  
2691828, at \*7–9 (W.D. Tex. Sept. 22, 2025).

1 argues that arriving immigrants like Mr. Temesgen have no due process rights per  
2 *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 138–40  
3 (2020). This Court should reject that disturbing argument, as “[m]ost courts”  
4 have. *Gao v. LaRose*, No. 25-cv-2084-RSH-SBC, 2025 WL 2770633, at \*3 (S.D.  
5 Cal. Sept. 26, 2025); *see also Abdul Kadir v. Larose*, No. 25-cv-1045-LL-MMP,  
6 2025 WL 2932654, at \*4 (S.D. Cal. Oct. 15, 2025); *Cong v. Noem*, No. 25-cv-  
7 3730-GPC-DEB, 2026 WL 76566, at \*3 (S.D. Cal. Jan. 9, 2026); *Kydyrali*, 499 F.  
8 Supp. 3d at 772; *Mardian v. Mayorkas*, 25-cv-3467-JLS (granting petition for  
9 arriving noncitizen, even though the government made this same argument);  
10 *Raeva v. Mayorkas*, 25-cv-3175-JO (same); *Abdul-Samed v. Warden of Golden*  
11 *State Annex Det. Facility*, No. 25-cv-98-SAB-HC, 2025 WL 2099343, at \*6 (E.D.  
12 Cal. July 25, 2025); *Hernandez v. Wofford*, No. 25-cv-986-KES-CDB (HC), 2025  
13 WL 2420390, at \*3 (E.D. Cal. Aug. 21, 2025); *Padilla v. ICE*, 704 F. Supp. 3d  
14 1163, 1171–72 (W.D. Wash. 2023).

15 That is because “*Thuraissigiam* addressed a noncitizen’s right to challenge  
16 *admission*, not detention.” *Abdul Kadir*, 2025 WL 2932654, at \*4; *accord Cong*,  
17 2026 WL 76566, at \*3 (“Though *Thuraissigiam* limits an arriving noncitizen’s due  
18 process rights regarding admission, the court did not address the issue of prolonged  
19 detention.”) This case is the reverse. To see why, it helps to unpack what exactly  
20 *Thuraissigiam* addressed.

21 *Thuraissigiam* considered whether a petitioner apprehended 25 yards from  
22 the border could challenge his expedited removal under the Due Process Clause.  
23 592 U.S. at 107. The Court answered “no.” According to the Court, “the ‘political  
24 department of the government’ had plenary authority to *admit or exclude* aliens  
25 seeking initial entry, and thus ‘an alien in respondent’s position has only those rights  
26 regarding admission that Congress has provided by statute.’” *Gao*, 2025 WL  
27 2770633, at \*3 (emphasis added) (quoting *Thuraissigiam*, 591 U.S. at 139–40).  
28 Thus, the Court held that (1) because the political branches have the absolute right

1 to *admit or exclude* arriving noncitizens, (2) arriving noncitizens have “only those  
2 rights *regarding admission*” that Congress chooses to provide.

3 From those propositions, it does not follow (1) that the political branches  
4 have the absolute right to *detain* arriving immigrants forever, for no reason, with  
5 no process, or (2) that arriving noncitizens have only those rights regarding  
6 *detention* that Congress chooses to provide. “Nowhere in that decision did the  
7 Supreme Court suggest that arriving aliens being held under § 1225(b) may be held  
8 indefinitely and unreasonably with no due process implications, nor that such aliens  
9 have no due process rights whatsoever.” *A.L. v. Oddo*, 761 F. Supp. 3d 822, 825  
10 (W.D. Pa. 2025).

11 Nor would it make sense to draw that inference from *Thuraissigiam*. “Due  
12 process, as [the Supreme] Court often has said, is a flexible concept that varies with  
13 the particular situation.” *Zinerman v. Burch*, 494 U.S. 113, 127 (1990). Courts must  
14 individually “determine what procedural protections the Constitution requires in a  
15 particular case,” *id.*, not assume that the procedures due in one context are the same  
16 procedures due in another. Because *Thuraissigiam* arose in the expedited removal  
17 context, it does not answer the question of what process is due in the detention  
18 context. Again, Mr. Temesgen does not ask this Court to order his legal *admission*;  
19 he merely seeks an end to his prolonged detention in a prison-like environment.

20 Respondents’ other leading Supreme Court case, *Shaughnessy v. United*  
21 *States ex rel. Mezei*, 345 U.S. 206, 207-09 (1953), is even less on point. “The *Mezei*  
22 Court explicitly grounded its decision in the special circumstances of a national  
23 emergency and the determination by the Attorney General that Mezei presented a  
24 threat to national security.” *Rosales-Garcia v. Holland*, 322 F.3d 386, 413–14 (6th  
25 Cir. 2003); *accord Amado*, 2025 WL 3079052, at \*5 (“*Mezei* involved a noncitizen  
26 who was permanently excluded from the United States on security grounds, not a  
27 detainee raising their due process rights in the context of detention without a bond  
28 hearing.”).

1 Yet here, no one has ever deemed Mr. Temesgen a danger or even a flight  
2 risk, much less an emergency threat to national security. Indeed, that is the entire  
3 premise of this petition: that the government cannot detain Mr. Temesgen  
4 indefinitely without any showing that that detention is necessary to serve a  
5 government interest. Plus, the Supreme Court has since called into question *Mezei*'s  
6 continued validity. *See Kydyrali*, 499 F. Supp. 3d at 772.

7 **II. Mr. Temesgen prevails under any due process factor standard.**

8 The government's erroneous arguments do not end there. As a last-ditch  
9 effort, it argues that even if Mr. Temesgen has a due process right against  
10 prolonged detention without even a bond hearing, his claim fails on its facts. *See*  
11 *Gov. Return* at 7, ECF No. 7. But courts regularly have granted bond hearings for  
12 people detained for similar amounts of time. *See, e.g., Raeva v. Mayorkas*, 25-cv-  
13 3175-JO (about 11 months); *Mardian v. Mayorkas*, 25-cv-3467-JLS (about 13  
14 months); *Malyshko v. Warden*, 26-cv-69-RBM (about 13 months); *Brissett v.*  
15 *Decker*, 324 F. Supp. 3d 444, 452 (S.D.N.Y. 2018) ("over nine months"); *Perez v.*  
16 *Decker*, No. 18-cv-5279-VEC, 2018 WL 3991497, at \*5 (S.D.N.Y. Aug. 20,  
17 2018) ("more than nine months"); *Masood v. Barr*, No. 19-cv-07623-JD, 2020  
18 WL 95633, at \*2 (N.D. Cal. Jan. 8, 2020) ("nearly nine months"). Indeed,  
19 "[c]ourts have found detention over seven months without a bond hearing weighs  
20 toward a finding that it is unreasonable." *Amado*, 2025 WL 3079052 at \*5  
21 (collecting cases). Thus, Mr. Temesgen clearly satisfies the first, and "most  
22 important factor" in assessing if a bond hearing is constitutionally required.  
23 *Banda*, 385 F. Supp. 3d at 1118.

24 As for the other factors, courts generally agree that the following are also  
25 relevant:

- 26 (1) "the likely duration of future detention," and  
27 (2) "the delays in the removal proceedings caused by the petitioner and the  
28 government."

1 *See Sanchez-Rivera v. Matuszewski*, No. 22-cv-1357-MMA-JLB, 2023 WL  
2 139801, at \*5–6 (S.D. Cal. Jan. 9, 2023) (surveying different approaches). Some  
3 courts also consider:

4 (3) “the conditions of detention,” and

5 (4) “the likelihood that the removal proceedings will result in a different  
6 final order.”

7 *Id.* Mr. Temesgen would prevail under any of these factor tests.

8 First, Mr. Temesgen has reason to anticipate significant future detention.  
9 The IJ denied his asylum application and ordered him removed on March 11,  
10 2026. Exhibit A at ¶ 4. Mr. Temesgen timely appealed on March 16, 2026, and his  
11 appeal remains pending. *Id.* at ¶ 5. All told, “[t]his process may take up to two  
12 years or longer.” *Banda*, 385 F. Supp. 3d at 1119. Because “Petitioner’s future  
13 detention can last several more months or even years[,]” this factor favors  
14 Mr. Temesgen. *Abdul Kadir*, 2025 WL 2932654, at \*5.

15 Second, the delay factor is neutral, because there is no indication that  
16 Mr. Temesgen engaged in any unreasonable delay.

17 Third, Mr. Temesgen’s conditions of confinement weigh in his favor.  
18 Detainees at the Otay Mesa Detention Center (“OMDC”) are “locked up behind  
19 razor wire and concrete walls in a secured facility, forced to wear a color-coded  
20 prisoner jump suit, forbidden from accessing the internet, restricted access to  
21 outdoor space, restricted on visitation, and guarded at all times with armed guards  
22 authorized to inflict punishment for violations of rules.” *Id.* In fact, individuals  
23 charged with federal criminal convictions are regularly incarcerated at the facility.  
24 Accordingly, “Petitioner’s confinement at OMDC is ‘indistinguishable from penal  
25 confinement.’” *Id.* (quoting *Kydyrali*, 499 F. Supp. 3d at 773).

26 These conditions are very challenging for Mr. Temesgen. He is suffering  
27 from insomnia and is unable to communicate with his family. Exhibit A at ¶ 7. All  
28 of this is taking a toll on his mental health. *Id.*

1  
2 Fourth, there is a significant likelihood that Mr. Temesgen will prevail on  
3 his asylum claim. He has been targeted by the Ethiopian government because of  
4 his ethnicity and political views. *Id.* at ¶ 1.

5 Under any test, then, Mr. Temesgen is entitled to release or a bond hearing.

6 **CLAIM AND PRAYER FOR RELIEF**

7 For the reasons just given, the Fifth Amendment Due Process Clause  
8 prohibits the government from continuing to detain Petitioner.

9 Accordingly, Petitioner respectfully requests that this Court:

10 **1. Order Respondents to immediately release Petitioner from custody.**

11 “In recent months, courts across the country have ordered the release of  
12 detainees in similar situations.” *Moctezuma v. Henkey*, No. 1:25-CV-  
13 00741-BLW, 2026 WL 18809, at \*5 (D. Idaho Jan. 2, 2026) (given that  
14 the government’s repeated use of unlawful detention policies across the  
15 country, causing petitioners to “sit in jail waiting for a judicial  
16 decision,” the court would order immediate release instead of causing  
17 additional delay through a bond hearing) (citing *Lepe v. Andrews*, 801 F.  
18 Supp. 3d 1104 (E.D. Cal. 2025); *J.U. v. Maldonado*, No. 25-cv-4836,  
19 2025 WL 2772765, at \*10 (E.D.N.Y. Sept. 29, 2025); *Rosado v.*  
20 *Figueroa*, No. 25-cv-2157, 2025 WL 2337099, at \*19 (D. Ariz. Aug. 11,  
21 2025); *Pinchi v. Noem*, No. 25-cv-05632, 2025 WL 1853763, at \*4  
22 (N.D. Cal. July 4, 2025). *Santiago v. Noem*, No. EP-25-CV-361, 2025  
23 WL 2792588, at \*13-14 (W.D. Tex. Oct. 2, 2025) (“Without a  
24 legitimate interest in her detention, immediate release appropriately  
25 remedies Respondents’ violation of [Petitioner’s] due process rights  
26 through her continued detention.”). Order, ECF No. 14 at 19, *Miri v.*  
27 *Bondi*, No. 5:26-CV-00698-MEMF (C.D. Cal. March 5, 2026) (“Miri’s  
28 prompt release is the remedy that will best return Miri to the status quo

1 and restore his position as it was prior to the detention that Miri  
2 contends was in violation of his constitutional and statutory  
3 protections.”).

4 **2. In the alternative, order a prompt § 1226(a) bond hearing, with**  
5 **safeguards and oversight provided by this Court.** *See* Order, ECF  
6 No. 13, *Sandesh v. LaRose*, No. 3:26-CV-00846-JES (S.D. Cal. March  
7 5, 2026). Specifically, the Court should order:

8 (1) Respondents provide Petitioner with a hearing and individualized  
9 bond determination within **ten days** of its order. *Id.*

10 (a) At that hearing, the government shall bear the burden of  
11 establishing by clear and convincing evidence that Petitioner  
12 poses a danger or flight risk, while further specifying that  
13 concerns about interrupting court schedules is not a ground to  
14 deny bond. *Id.*

15 (b) The IJ shall consider alternative conditions of release and  
16 Petitioner’s ability to pay bond if he or she determines bond is  
17 appropriate. *Id.*

18 (c) Respondents shall make a complete record of the bond  
19 hearing available to Petitioner and his counsel. *Id.*

20 (2) Respondents are ordered to file a Notice of Compliance within  
21 **five days** of providing Petitioner with the bond hearing, including  
22 apprising the Court of the results of the hearing. *Id.*

23 (3) Prohibit ICE from invoking the automatic stay provisions under 8  
24 C.F.R. § 1003.19(i)(2) to defeat the IJ’s bond determination.

25 3. Order all other relief that the Court deems just and proper.

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Respectfully submitted,

Dated: April 28, 2026

s/ Camille Fenton

Camille Fenton  
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Attorneys for Mr. Temesgen  
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# EXHIBIT A

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

BEJTOWAL TEMESGEN,  
  
Petitioner,

Case No.: 26-cv-2309-BJC

v.

**Declaration of Bejtowal Temesgen**

CHRISTOPHER LAROSE, Warden at  
Otay Mesa Detention Center,  
  
Respondent.

I, Bejtowal Temesgen, declare:

1. I was born in Ethiopia. I face political and ethnic persecution in Ethiopia. I am a supporter of the [REDACTED] and I am a member of the [REDACTED]. I have been targeted by the [REDACTED] that is currently in power.
2. I entered the United States on September 8, 2025, and am here seeking asylum. I was taken into immigration custody that day and have been detailed ever since.
3. I have been in immigration custody for nearly eight months. I have never received a bond hearing.
4. I was denied asylum by the immigration judge (“IJ”) on March 11, 2026.
5. I filed my appeal to the Board of Immigration Appeals (“BIA”) right away on March 16, 2026. My appeal is still pending.
6. I am not trying to delay my case. I would like it to go as fast as possible.

- 1 7. I am having a very difficult time in detention at the Otay Mesa Detention
- 2 Center (“OMDC”). I am suffering from insomnia. I cannot communicate
- 3 with any of my family members, which is also taking a toll on my mental
- 4 health.
- 5 8. I have never committed any crime.
- 6 9. I do not have money to hire a lawyer.

7  
8 I, Camille Fenton, declare under penalty of perjury that I reviewed this declaration  
9 with Bejtowal Temesgen using an Amharic interpreter, and he confirmed that it was  
10 true and correct.

11 Date: April 28, 2026

Signed: /s/ *Camille Fenton*

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