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

DAWIT FITSUM KALAYU,
Petitioner,

v.

MARKWAYNE MULLIN, Secretary of
the Department of Homeland Security,
TODD BLANCE, Acting Attorney
General, TODD M. LYONS, Acting
Director, Immigration and Customs
Enforcement, JESUS ROCHA, Acting
Field Office Director, San Diego Field
Office, and CHRISTOPHER LAROSE,
Warden of the Otay Mesa Detention
Facility,

Respondents.

CIVIL CASE NO.: 26-cv-2394-LL

**Traverse in Support of
Petition for a Writ
of Habeas Corpus**

Radii Mirimanov has been detained pending his immigration proceedings for 7.5 months, yet the government has never shown that he poses any danger to the community or risk of flight. His prolonged detention with no justifying government interest violates the Due Process Clause.

ARGUMENT

I. Section 1252(g) does not deprive this Court of jurisdiction on any issue in this petition.

As an initial matter, § 1252(g) does not bar review of “all claims arising from deportation proceedings.” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S.

1 471, 482 (1999). Instead, courts “have jurisdiction to decide a purely legal question
 2 that does not challenge the Attorney General's discretionary authority.” *Ibarra-*
 3 *Perez v. United States*, __ F.4th __, 2025 WL 2461663, at *6 (9th Cir. Aug. 27,
 4 2025) (cleaned up).

5 Section 1252(g) “does not prohibit challenges to unlawful practices merely
 6 because they are in some fashion connected to removal orders.” *Id.* Instead, 1252(g)
 7 is “limited . . . to actions challenging the Attorney General's discretionary decisions
 8 to initiate proceedings, adjudicate cases, and execute removal orders.” *Arce v.*
 9 *United States*, 899 F.3d 796, 800 (9th Cir. 2018). It does not apply to arguments
 10 that the government “entirely lacked the authority, and therefore the discretion,” to
 11 carry out a particular action. *Id.* at 800. Thus, § 1252(g) applies to “discretionary
 12 decisions that [the Secretary] actually has the power to make, as compared to the
 13 violation of his mandatory duties.” *Ibarra-Perez*, 2025 WL 2461663, at *9.

14 The same logic applies to all of Mr. Kalayu’s claims, because he challenges
 15 only violations of ICE’s mandatory duties under the Constitution. Accordingly,
 16 “[t]hough 8 U.S.C § 1252(g), precludes this Court from exercising jurisdiction over
 17 the executive's decision to ‘commence proceedings, adjudicate cases, or execute
 18 removal orders against any alien,’ this Court has habeas jurisdiction over the issues
 19 raised here, namely the lawfulness of [Mr. Kalayu’s] continued detention.” *Y.T.D.*,
 20 2025 WL 2675760, at *5. Many courts agree. *See, e.g., Kong*, 62 F.4th at 617
 21 (“§ 1252(g) does not bar judicial review of Kong's challenge to the lawfulness of
 22 his detention,” including ICE’s “fail[ure] to abide by its own regulations”);
 23 *Cardoso v. Reno*, 216 F.3d 512, 516 (5th Cir. 2000) (“[S]ection 1252(g) does not
 24 bar courts from reviewing an alien detention order[.]”); *Parra v. Perryman*, 172
 25 F.3d 954, 957 (7th Cir. 1999) (1252(g) did not apply to a “claim concern[ing]
 26 detention”); *J.R. v. Bostock*, No. 2:25-CV-01161-JNW, 2025 WL 1810210, at *3
 27 (W.D. Wash. June 30, 2025) (1252(g) did not apply to claims that ICE was “failing
 28 to carry out non-discretionary statutory duties and provide due process”); *D.V.D. v.*

1 *U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355, 377–78 (D. Mass. 2025)
 2 (1252(g) did not bar review of “the purely legal question of whether the
 3 Constitution and relevant statutes require notice and an opportunity to be heard
 4 prior to removal of an alien to a third country”).

5 **II. Mr. Kalayu’s detention is unconstitutionally prolonged.**

6 The Petition explained that Mr. Kalayu’s prolonged detention without a bond
 7 hearing violates the Fifth Amendment’s Due Process Clause. The Return’s contrary
 8 arguments fail.

9 1. Mr. Kalayu has a due process right

10 As an initial matter, though the government spends much of the Return
 11 arguing that § 1225(b) mandates Mr. Kalayu’s detention, those points are irrelevant
 12 to the claim made here. Mr. Kalayu concedes that he is subject to mandatory
 13 detention. He just claims that his mandatory detention with no showing of flight
 14 risk or danger violates the Constitution.

15 As relevant to that claim, the government contends that two Supreme Court
 16 precedents foreclose due process challenges in this context. First, the government
 17 argues that arriving immigrants like Petitioners have no due process rights per
 18 *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 138–40 (2020).
 19 This Court should reject that disturbing argument, as “[m]ost courts” have. *Gao v.*
 20 *LaRose*, No. 25-CV-2084-RSH-SBC, 2025 WL 2770633, at *3 (S.D. Cal. Sept. 26,
 21 2025); *see, e.g., Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL
 22 2932654, at *4 (S.D. Cal. Oct. 15, 2025); *Cong v. Noem*, No. 25-CV-3730-GPC-
 23 DEB, 2026 WL 76566, at *3 (S.D. Cal. Jan. 9, 2026); *Kydyrali v. Wolf*, 499 F.
 24 Supp. 3d 768, 772 (S.D. Cal. 2020) (Battaglia, J.); *Mardian v. Mayorkas*, 25-cv-
 25 3467-JLS (granting petition for arriving noncitizen, even though the government
 26 made this argument); *Raeva v. Mayorkas*, 25-cv-3175-JO (same); *Abdul-Samed v.*
 27 *Warden of Golden State Annex Det. Facility*, No. 25-cv-98-SAB-HC, 2025 WL
 28 2099343, at *6 (E.D. Cal. July 25, 2025); *Hernandez v. Wofford*, No. 25-cv-986-

1 KES-CDB (HC), 2025 WL 2420390, at *3 (E.D. Cal. Aug. 21, 2025); *Padilla v.*
 2 *ICE*, 704 F. Supp. 3d 1163, 1171–72 (W.D. Wash. 2023).

3 “*Thuraissigiam* addressed a noncitizen's right to challenge *admission*, not
 4 detention.” *Abdul Kadir*, 2025 WL 2932654, at *4; *accord Cong v. Noem*, 2026
 5 WL 76566, at *3 (“Though *Thuraissigiam* limits an arriving noncitizen's due
 6 process rights regarding admission, the court did not address the issue of prolonged
 7 detention.”). *Thuraissigiam* considered whether a petitioner apprehended 25 yards
 8 from the border could challenge his expedited removal under the Due Process
 9 Clause. 592 U.S. at 107. The Court answered “no.” According to the Court, “the
 10 ‘political department of the government’ had plenary authority to admit or exclude
 11 aliens seeking initial entry, and thus ‘an alien in respondent's position has only those
 12 rights regarding admission that Congress has provided by statute.’” *Gao*, 2025 WL
 13 2770633, at *3 (quoting *Thuraissigiam*, 591 U.S. at 139–40). Thus, the Court held
 14 that (1) because the political branches have the absolute right to *admit or exclude*
 15 arriving noncitizens, (2) arriving noncitizens have “only those rights *regarding*
 16 *admission*” that Congress chooses to provide.

17 It does not follow (1) that the political branches have the absolute right to
 18 *detain* arriving immigrants for as long as they want, for no reason, with no process,
 19 or (2) that arriving noncitizens have only those rights regarding *detention* that
 20 Congress chooses to provide. “Nowhere in that decision did the Supreme Court
 21 suggest that arriving aliens being held under § 1225(b) may be held indefinitely and
 22 unreasonably with no due process implications, nor that such aliens have no due
 23 process rights whatsoever.” *A.L. v. Oddo*, 761 F. Supp. 3d 822, 825 (W.D. Pa.
 24 2025).

25 Nor would it make sense to draw that inference from *Thuraissigiam*. “Due
 26 process, as [the Supreme] Court often has said, is a flexible concept that varies with
 27 the particular situation.” *Zinerman v. Burch*, 494 U.S. 113, 127 (1990). Courts must
 28 individually “determine what procedural protections the Constitution requires in a

1 particular case,” *id.*, not assume that the procedures due in one context are the same
2 procedures due in another. Because *Thuraissigiam* arose in the expedited removal
3 context, it does not answer the question of what process is due in the detention
4 context.

5 *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 207-09 (1953), is
6 even less on point. “The *Mezei* Court explicitly grounded its decision in the special
7 circumstances of a national emergency and the determination by the Attorney
8 General that Mezei presented a threat to national security.” *Rosales-Garcia v.*
9 *Holland*, 322 F.3d 386, 413–14 (6th Cir. 2003); *accord Amado v. USDOJ*, No.
10 25CV2687-LL(DDL), 2025 WL 3079052, at *5 (S.D. Cal. Nov. 4, 2025) (“*Mezei*
11 involved a noncitizen who was permanently excluded from the United States on
12 security grounds, not a detainee raising their due process rights in the context of
13 detention without a bond hearing.”). Here, no one has ever found Mr. Gebremariam
14 to be a danger or even a flight risk, much less an emergency threat to national
15 security. Indeed, that is the entire premise of this petition: that the government
16 cannot detain Mr. Kalayu indefinitely without any showing that that detention is
17 necessary to serve a government interest. Plus, the Supreme Court has since called
18 into question *Mezei*’s continued validity. *See Kydyrali v. Wolf*, 499 F. Supp. 3d 768,
19 772 (S.D. Cal. 2020).

20 In short, if the government were right that immigrants have no due process
21 rights against arbitrary detention regardless of length, then the Ninth Circuit could
22 not have harbored “grave doubts that any statute that allows for arbitrary prolonged
23 detention without any process is constitutional.” *Rodriguez v. Marin*, 909 F.3d 252,
24 256 (9th Cir. 2018). That the Court did have such doubt shows that this remains an
25 open question, one that this Court should continue to answer in Petitioners’ favor.
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2. Mr. Kalayu's continued detention without a bond hearing violates the Due Process Clause.

Finally, the government argues that even if some immigrants have a right to a bond hearing, Mr. Kalayu does not. The government contests only 3 factors.

First, the government claims that Mr. Kalayu has not been detained for long enough. But “[c]ourts have found detention over seven months without a bond hearing weighs toward a finding that it is unreasonable.” *Amado v. United States Dep't of Just.*, No. 25CV2687-LL(DDL), 2025 WL 3079052, at *5 (S.D. Cal. Nov. 4, 2025) (collecting cases). Because Mr. Kalayu has been detained for over eight months, this factor weighs in his favor.

Second, the government claims that future detention weighs against release. But the government admits that Mr. Kalayu's case is on appeal, and the government provides no reason to think that his appeals will be swiftly resolved. All told, the appellate “process may take up to two years or longer.” *Banda*, 385 F. Supp. 3d at 1119. Because “Petitioner's future detention can last several more months or even years[,]” this factor favors Mr. Kalayu. *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654, at *5 (S.D. Cal. Oct. 15, 2025).

Third, the government notes that the government did not cause delay. But neither did Mr. Kalayu, so this factor is neutral. Weighing all factors together, Mr. Kalayu's detention violates the Due Process Clause.

Respectfully submitted,

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s/ Katie Hurrelbrink

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