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

IBRAHIM MOHAMED,

Petitioner,

v.

CHRISTOPHER LAROSE, Warden at
Otay Mesa Detention Center,

Respondent.

Case No.: 26-cv-2679-BTM

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

INTRODUCTION

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

STATEMENT OF RELEVANT FACTS

Mr. Mohamed is an Egyptian national. Exhibit A, Mohamed Decl. at ¶ 1. He faces political and persecution in Egypt. *Id.* Mr. Mohamed entered the United States on September 27, 2025, to seek asylum here. *Id.* at ¶¶ 1–2. He was immediately detained and has been in detention while fighting his immigration case for nearly eight months. *Id.* at ¶¶ 2–3.

Mr. Mohamed was denied asylum by the immigration judge (“IJ”) on May 12, 2026. *Id.* at ¶ 5. He intends to file an appeal to the Board of Immigration Appeals (“BIA”). *Id.*

Mr. Mohamed is having a very difficult time in detention at the Otay Mesa Detention Center (“OMDC”). *Id.* at ¶ 7. He is in a lot of pain from a hernia and suffers from hemorrhoids because of the food in detention. *Id.* Mr. Mohamed is not receiving adequate medical treatment. *Id.* In addition, Mr. Mohamed was sexually harassed in detention about two months ago. *Id.* at ¶ 8. He has asked for an investigation to be conducted into the incident, but it does not seem like the officers are doing anything. *Id.* Mr. Mohamed is depressed as a result. *Id.* at ¶ 9.

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

First, § 1252(g) does not bar review of “all claims arising from deportation proceedings.” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Instead, courts “have jurisdiction to decide a purely legal question that does not challenge the Attorney General’s discretionary authority.” *Ibarra-Perez v. United States*, 154 F.4th 989, 996 (9th Cir. 2025) (cleaned up).

Section 1252(g) “does not prohibit challenges to unlawful practices merely because they are in some fashion connected to removal orders.” *Id.* Instead, 1252(g) is “limited . . . to actions challenging the Attorney General’s discretionary decisions to initiate proceedings, adjudicate cases, and execute removal orders.” *Arce v. United States*, 899 F.3d 796, 800 (9th Cir. 2018). It does not apply to arguments

1 that the government “entirely lacked the authority, and therefore the discretion,” to
2 carry out a particular action. *Id.* at 800. Thus, § 1252(g) applies to “discretionary
3 decisions that [the Secretary] actually has the power to make, as compared to the
4 violation of his mandatory duties.” *Ibarra-Perez*, 154 F.4th at 999.

5 The same logic applies to all of Mr. Mohamed’s claims, because he
6 challenges only violations of ICE’s mandatory duties under the Constitution.
7 Accordingly, “[t]hough 8 U.S.C § 1252(g), precludes this Court from exercising
8 jurisdiction over the executive’s decision to ‘commence proceedings, adjudicate
9 cases, or execute removal orders against any alien,’ this Court has habeas
10 jurisdiction over the issues raised here, namely the lawfulness of [Mr. Mohamed’s]
11 continued detention.” *Y.T.D. v. Andrews*, No. 25-cv-01100-JLT, 2025 WL
12 2675760, at *5 (E.D. Cal. Sept. 18, 2025). Many courts agree. *See, e.g., Kong v.*
13 *United States*, 62 F.4th 608, 617 (1st Cir. 2023) (“§ 1252(g) does not bar judicial
14 review of Kong’s challenge to the lawfulness of his detention,” including ICE’s
15 “fail[ure] to abide by its own regulations”); *Cardoso v. Reno*, 216 F.3d 512, 516
16 (5th Cir. 2000) (“[S]ection 1252(g) does not bar courts from reviewing an alien
17 detention order[.]”); *Parra v. Perryman*, 172 F.3d 954, 957 (7th Cir. 1999) (1252(g)
18 did not apply to a “claim concern[ing] detention”); *J.R. v. Bostock*, No. 25-cv-
19 01161-JNW, 2025 WL 1810210, at *3 (W.D. Wash. June 30, 2025) (1252(g) did
20 not apply to claims that ICE was “failing to carry out non-discretionary statutory
21 duties and provide due process”); *D.V.D. v. U.S. Dep’t of Homeland Sec.*, 778 F.
22 Supp. 3d 355, 377–78 (D. Mass. 2025) (1252(g) did not bar review of “the purely
23 legal question of whether the Constitution and relevant statutes require notice and
24 an opportunity to be heard prior to removal of an alien to a third country”).

25 **II. The Fifth Amendment’s Due Process Clause prohibits prolonged**
26 **immigration detention without a bond hearing, contrary to**
27 **Respondents’ arguments.**

28 Mr. Mohamed’s habeas petition raises a claim that the Fifth Amendment’s
Due Process Clause countermands the government’s statutory authority to detain

1 immigrants without bond hearings when that detention becomes prolonged.

2 As Respondents note, Mr. Mohamed is detained under one such statute, 8
3 U.S.C. § 1225(b). “Section 1225 applies to ‘applicants for admission’—
4 noncitizens who ‘arrive[] in the United States,’ or are ‘present’ in the United
5 States but have ‘not been admitted.’” *Banda v. McAleenan*, 385 F. Supp. 3d 1099,
6 1111 (W.D. Wash. 2019). It “applies to, among others, noncitizens initially
7 determined to be inadmissible because of . . . lack of valid documentation.” *Id.*
8 That includes persons who, like Mr. Mohamed, make credible asylum and other
9 fear-based claims whose asylum case remains pending. *See* 8 U.S.C.
10 § 1225(b)(1)(B)(ii).

11 In years past, the Ninth Circuit applied the constitutional avoidance canon
12 to hold that § 1225(b) implicitly entitled detained immigrants to bond hearings
13 every six months. *Rodriguez v. Robbins*, 804 F.3d 1060, 1087–89 (9th Cir. 2015).
14 But the Supreme Court overruled that precedent in *Jennings v. Rodriguez*, holding
15 that the statute does not entitle detainees to bond hearings or otherwise impose
16 “any limit on the length of detention.” 583 U.S. 281, 297 (2018). *Jennings* did not
17 address whether prolonged, mandatory detention without bond hearings violates
18 due process. *Id.* at 312.¹ “In the wake of *Jennings*, district courts have grappled
19 with how to address due process challenges to prolonged mandatory detention
20 under § 1225(b).” *Banda*, 385 F. Supp. 3d at 1116.

21 But after a full evaluation, “[n]early all district courts that have considered
22 the issue agree that prolonged mandatory detention pending removal proceedings,
23 without a bond hearing, will—at some point—violate the right to due process.”
24 *Id.* (cleaned up) (collecting cases); *accord Amado v. U.S. Dep’t of Justice*, No. 25-
25 cv-2684-LL-DDL, 2025 WL 3079052, *3–*5 (S.D. Cal. Nov. 4, 2025). Indeed,

26
27 ¹ 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 the Ninth Circuit has “grave doubts that any statute that allows for arbitrary
2 prolonged detention without any process is constitutional or that those who
3 founded our democracy precisely to protect against the government’s arbitrary
4 deprivation of liberty would have thought so.” *Rodriguez*, 909 F.3d at 256–57.

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

9 As relevant to that claim, Respondents contend that two Supreme Court
10 precedents foreclose due process challenges in this context. First, Respondents
11 argues that arriving immigrants like Mr. Mohamed have no due process rights per
12 *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 138–40
13 (2020). This Court should reject that disturbing argument, as “[m]ost courts”
14 have. *Gao v. LaRose*, No. 25-cv-2084-RSH-SBC, 2025 WL 2770633, at *3 (S.D.
15 Cal. Sept. 26, 2025); *see also Abdul Kadir v. Larose*, No. 25-cv-1045-LL-MMP,
16 2025 WL 2932654, at *4 (S.D. Cal. Oct. 15, 2025); *Cong v. Noem*, No. 25-cv-
17 3730-GPC-DEB, 2026 WL 76566, at *3 (S.D. Cal. Jan. 9, 2026); *Kydyrali*, 499 F.
18 Supp. 3d at 772; *Mardian v. Mayorkas*, 25-cv-3467-JLS (granting petition for
19 arriving noncitizen, even though the government made this same argument);
20 *Raeva v. Mayorkas*, 25-cv-3175-JO (same); *Abdul-Samed v. Warden of Golden*
21 *State Annex Det. Facility*, No. 25-cv-98-SAB-HC, 2025 WL 2099343, at *6 (E.D.
22 Cal. July 25, 2025); *Hernandez v. Wofford*, No. 25-cv-986-KES-CDB (HC), 2025
23 WL 2420390, at *3 (E.D. Cal. Aug. 21, 2025); *Padilla v. ICE*, 704 F. Supp. 3d
24 1163, 1171–72 (W.D. Wash. 2023).

25 That is because “*Thuraissigiam* addressed a noncitizen’s right to challenge
26 admission, not detention.” *Abdul Kadir*, 2025 WL 2932654, at *4; *accord Cong*,
27 2026 WL 76566, at *3 (“Though *Thuraissigiam* limits an arriving noncitizen’s due
28 process rights regarding admission, the court did not address the issue of prolonged

1 detention.”) This case is the reverse. To see why, it helps to unpack what exactly
2 *Thuraissigiam* addressed.

3 *Thuraissigiam* considered whether a petitioner apprehended 25 yards from
4 the border could challenge his expedited removal under the Due Process Clause.
5 592 U.S. at 107. The Court answered “no.” According to the Court, “the ‘political
6 department of the government’ had plenary authority to *admit or exclude* aliens
7 seeking initial entry, and thus ‘an alien in respondent’s position has only those rights
8 regarding admission that Congress has provided by statute.’” *Gao*, 2025 WL
9 2770633, at *3 (emphasis added) (quoting *Thuraissigiam*, 591 U.S. at 139–40).
10 Thus, the Court held that (1) because the political branches have the absolute right
11 to *admit or exclude* arriving noncitizens, (2) arriving noncitizens have “only those
12 rights *regarding admission*” that Congress chooses to provide.

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

21 Nor would it make sense to draw that inference from *Thuraissigiam*. “Due
22 process, as [the Supreme] Court often has said, is a flexible concept that varies with
23 the particular situation.” *Zinerman v. Burch*, 494 U.S. 113, 127 (1990). Courts must
24 individually “determine what procedural protections the Constitution requires in a
25 particular case,” *id.*, not assume that the procedures due in one context are the same
26 procedures due in another. Because *Thuraissigiam* arose in the expedited removal
27 context, it does not answer the question of what process is due in the detention
28 context. Again, Mr. Mohamed does not ask this Court to order his legal *admission*;

1 he merely seeks an end to his prolonged detention in a prison-like environment.

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

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

17 **III. Mr. Mohamed prevails under any due process factor standard.**

18 The government's erroneous arguments do not end there. As a last-ditch
19 effort, it argues that even if Mr. Mohamed has a due process right against
20 prolonged detention without even a bond hearing, his claim fails on its facts. *See*
21 Gov. Return at 8, ECF No. 7. But courts regularly have granted bond hearings for
22 people detained for similar amounts of time. *See, e.g., Raeva v. Mayorkas*, 25-cv-
23 3175-JO (about 11 months); *Mardian v. Mayorkas*, 25-cv-3467-JLS (about 13
24 months); *Malyshko v. Warden*, 26-cv-69-RBM (about 13 months); *Brissett v.*
25 *Decker*, 324 F. Supp. 3d 444, 452 (S.D.N.Y. 2018) ("over nine months"); *Perez v.*
26 *Decker*, No. 18-cv-5279-VEC, 2018 WL 3991497, at *5 (S.D.N.Y. Aug. 20,
27 2018) ("more than nine months"); *Masood v. Barr*, No. 19-cv-07623-JD, 2020
28 WL 95633, at *2 (N.D. Cal. Jan. 8, 2020) ("nearly nine months"). Indeed,

1 “[c]ourts have found detention over seven months without a bond hearing weighs
2 toward a finding that it is unreasonable.” *Amado*, 2025 WL 3079052 at *5
3 (collecting cases). Thus, Mr. Mohamed clearly satisfies the first, and “most
4 important factor” in assessing if a bond hearing is constitutionally required.
5 *Banda*, 385 F. Supp. 3d at 1118.

6 As for the other factors, courts generally agree that the following are also
7 relevant:

8 (1) “the likely duration of future detention,” and

9 (2) “the delays in the removal proceedings caused by the petitioner and the
10 government.”

11 *See Sanchez-Rivera v. Matuszewski*, No. 22-cv-1357-MMA-JLB, 2023 WL
12 139801, at *5–6 (S.D. Cal. Jan. 9, 2023) (surveying different approaches). Some
13 courts also consider:

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

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

17 *Id.* Mr. Mohamed would prevail under any of these factor tests.

18 First, Mr. Mohamed has reason to anticipate significant future detention.
19 The IJ denied his asylum application and ordered him removed on May 12, 2026.
20 Exhibit A at ¶ 5. Mr. Mohamed intends to appeal. *Id.* All told, “[t]his process may
21 take up to two years or longer.” *Banda*, 385 F. Supp. 3d at 1119. Because
22 “Petitioner’s future detention can last several more months or even years[,]” this
23 factor favors Mr. Mohamed. *Abdul Kadir*, 2025 WL 2932654, at *5.

24 Second, the delay factor is neutral, because there is no indication that
25 Mr. Mohamed engaged in any unreasonable delay.

26 Third, Mr. Mohamed’s conditions of confinement weigh in his favor.
27 Detainees at the Otay Mesa Detention Center (“OMDC”) are “locked up behind
28 razor wire and concrete walls in a secured facility, forced to wear a color-coded

1 prisoner jump suit, forbidden from accessing the internet, restricted access to
2 outdoor space, restricted on visitation, and guarded at all times with armed guards
3 authorized to inflict punishment for violations of rules.” *Id.* In fact, individuals
4 charged with federal criminal convictions are regularly incarcerated at the facility.
5 Accordingly, “Petitioner’s confinement at OMDC is ‘indistinguishable from penal
6 confinement.’” *Id.* (quoting *Kydyrali*, 499 F. Supp. 3d at 773).

7 These conditions are very challenging for Mr. Mohamed. He is in chronic
8 pain from a hernia and is suffering from hemorrhoids because of the food served
9 in the detention center. Exhibit A at ¶ 7. Mr. Mohamed is not receiving adequate
10 medical treatment for any of these issues. *Id.* In addition, Mr. Mohammed was
11 sexually harassed while in detention. *Id.* at ¶ 8. Another detainee shoved their
12 fingers into his anus. *Id.* Mr. Mohamed asked that the incident be investigated, but
13 nothing has been done by the detention facility staff to date. *Id.* Mr. Mohamed has
14 become depressed as a result. *Id.*

15 Fourth, there is a significant likelihood that Mr. Mohamed will prevail on
16 his asylum claim. He has been targeted by the Egyptian government because of
17 his political views. *Id.* at ¶ 1.

18 Under any test, then, Mr. Mohamed is entitled to release or a bond hearing.

19 CLAIM AND PRAYER FOR RELIEF

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

22 Accordingly, Petitioner respectfully requests that this Court:

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

24 “In recent months, courts across the country have ordered the release of
25 detainees in similar situations.” *Moctezuma v. Henkey*, No. 1:25-CV-
26 00741-BLW, 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026) (given that
27 the government’s repeated use of unlawful detention policies across the
28 country, causing petitioners to “sit in jail waiting for a judicial

1 decision,” the court would order immediate release instead of causing
2 additional delay through a bond hearing) (citing *Lepe v. Andrews*, 801 F.
3 Supp. 3d 1104 (E.D. Cal. 2025); *J.U. v. Maldonado*, No. 25-cv-4836,
4 2025 WL 2772765, at *10 (E.D.N.Y. Sept. 29, 2025); *Rosado v.*
5 *Figueroa*, No. 25-cv-2157, 2025 WL 2337099, at *19 (D. Ariz. Aug. 11,
6 2025); *Pinchi v. Noem*, No. 25-cv-05632, 2025 WL 1853763, at *4
7 (N.D. Cal. July 4, 2025). *Santiago v. Noem*, No. EP-25-CV-361, 2025
8 WL 2792588, at *13-14 (W.D. Tex. Oct. 2, 2025) (“Without a
9 legitimate interest in her detention, immediate release appropriately
10 remedies Respondents’ violation of [Petitioner’s] due process rights
11 through her continued detention.”). Order, ECF No. 14 at 19, *Miri v.*
12 *Bondi*, No. 5:26-CV-00698-MEMF (C.D. Cal. March 5, 2026) (“Miri’s
13 prompt release is the remedy that will best return Miri to the status quo
14 and restore his position as it was prior to the detention that Miri
15 contends was in violation of his constitutional and statutory
16 protections.”).

17 **2. In the alternative, order a prompt § 1226(a) bond hearing, with**
18 **safeguards and oversight provided by this Court.** See Order, ECF
19 No. 13, *Sandesh v. LaRose*, No. 3:26-CV-00846-JES (S.D. Cal. March
20 5, 2026). Specifically, the Court should order:

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

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

28 (b) The IJ shall consider alternative conditions of release and

Petitioner's ability to pay bond if he or she determines bond is appropriate. *Id.*

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

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

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

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

Respectfully submitted,

Dated: May 14, 2026

s/ Camille Fenton

Camille Fenton

Federal Defenders of San Diego, Inc.

Attorneys for Mr. Mohamed

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EXHIBIT A

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8
9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**
11

12 IBRAHIM MOHAMED,

Case No.: 26-cv-2679-BTM

13 Petitioner,

14 v.

**Declaration of
Ibrahim Mohamed**

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

17 Respondent.
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I, Ibrahim Mohamed, declare:

1. I was born in Egypt. I came to the United States to seek asylum because I face political persecution in Egypt. I've been arrested and put in jail by the current government because I oppose it.
2. I entered the United States on September 27, 2025. I was taken into immigration custody that day and have been detained ever since. I was transferred from the border patrol station to the Otay Mesa Detention Center ("OMDC") on October 1, 2025.
3. I have been detained while fighting my immigration case for nearly eight months.
4. I submitted my asylum application in January of 2026. I have had individual hearings on March 31, 2026, April 7, 2026, May 4, 2026, and May 12, 2026.
5. The immigration judge ("IJ") denied my asylum application at my May 12, 2026, individual hearing. I plan to appeal this denial.

- 1 6. I am not trying to delay my case. I would like it to go as fast as possible.
- 2 7. I am having a very difficult time in detention at the OMD. I am in a lot of
- 3 pain from a hernia. The food is terrible and I have developed hemorrhoids
- 4 because of it. I am not receiving adequate medical treatment for either of
- 5 these health conditions while in detention.
- 6 8. I was sexually harassed in detention about two months ago. Another
- 7 detainee [REDACTED] I want an investigation done
- 8 into the incident, but the officers tell me I must wait. It has been two
- 9 months, and I have received no news about any investigation being carried
- 10 out.
- 11 9. I am depressed and on anti-depressants because of all of this.
- 12 10. I have never committed any crime.
- 13 11. I do not have money to hire a lawyer.

14 I, Camille Fenton, declare under penalty of perjury that I reviewed this declaration
15 with Ibrahim Mohamed using an Arabic interpreter, and he confirmed that it was
16 true and correct.

17 Date: May 6, 2026

Signed: /s/ Camille Fenton