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

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Civil Case No.: 26-cv-2944-BJC-JAC

v.

Traverse in support of a petition for writ of habeas corpus

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

Respondents.

INTRODUCTION

Tu Danh Le has been detained in immigration proceedings for over six months, yet the government has never shown that he poses any danger to the community or risk of flight. He is likely to be detained for an additional prolonged period as his case remains pending. Mr. Le's prolonged detention with no justifying government interest violates the Due Process Clause. Contrary to the government's claims, no Supreme Court precedent prevents this Court from vindicating his due process rights, and many immigrants in this district have received bond hearings after equivalent time in detention. This Court should

1 therefore order outright release—or, at the very least, put in place additional
2 procedural protections.

3 **ARGUMENT**

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

6 First, § 1252(g) does not bar review of “all claims arising from deportation
7 proceedings.” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482
8 (1999). Instead, courts “have jurisdiction to decide a purely legal question that does
9 not challenge the Attorney General’s discretionary authority.” *Ibarra-Perez v.*
10 *United States*, 154 F.4th 989, 996 (9th Cir. 2025) (cleaned up).

11 Section 1252(g) “does not prohibit challenges to unlawful practices merely
12 because they are in some fashion connected to removal orders.” *Id.* Instead,
13 § 1252(g) is “limited . . . to actions challenging the Attorney General’s
14 discretionary decisions to initiate proceedings, adjudicate cases, and execute
15 removal orders.” *Arce v. United States*, 899 F.3d 796, 800 (9th Cir. 2018). It does
16 not apply to arguments that the government “entirely lacked the authority, and
17 therefore the discretion,” to carry out a particular action. *Id.* Thus, § 1252(g) applies
18 to “discretionary decisions that [the Secretary] actually has the power to make, as
19 compared to the violation of his mandatory duties.” *Ibarra-Perez*, 154 F.4th at 999.

20 The same logic applies to all of Mr. Le’s claims, because he challenges only
21 violations of ICE’s mandatory duties under the Constitution. Accordingly,
22 “[t]hough 8 U.S.C § 1252(g) precludes this Court from exercising jurisdiction over
23 the executive’s decision to ‘commence proceedings, adjudicate cases, or execute
24 removal orders against any alien,’ this Court has habeas jurisdiction over the issues
25 raised here, namely the lawfulness of [Mr. Le’s] continued detention.” *Y.T.D. v.*
26 *Andrews*, No. 25-CV-01100-JLT, 2025 WL 2675760, at *5 (E.D. Cal. Sept. 18,
27 2025). Many courts, including ones in this District, agree. *See, e.g., Markov v.*
28 *LaRose*, No. 25-CV-3811-JLS, 2026 WL 92069, at *1–2 (S.D. Cal. Jan. 13, 2026)

1 (finding that § 1252(g) does not bar due process claims and does not strip courts of
2 jurisdiction).

3 **II. The Fifth Amendment's Due Process Clause prohibits prolonged**
4 **immigration detention without a bond hearing, contrary to**
5 **Respondents' arguments.**

6 The Amended Petition explains that Mr. Le's prolonged detention without a
7 bond hearing violates the Fifth Amendment's Due Process Clause. The return's
8 contrary arguments fail.

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

14 As relevant to that claim, the government contends that two Supreme Court
15 precedents foreclose due process challenges in this context. The government argues
16 that arriving immigrants like Mr. Le have no due process rights per *Department of*
17 *Homeland Security v. Thuraissigiam*, 591 U.S. 103, 138–40 (2020). This Court
18 should reject that disturbing argument, as “[m]ost courts” have. *Gao v. LaRose*, No.
19 25-CV-2084-RSH-SBC, 2025 WL 2770633, at *3 (S.D. Cal. Sept. 26, 2025); *see*,
20 *e.g.*, *Abdul Kadir v. Larose*, No. 25-CV-1045-LL-MMP, 2025 WL 2932654, at *4
21 (S.D. Cal. Oct. 15, 2025); *Cong v. Noem*, No. 25-CV-3730-GPC-DEB, 2026 WL
22 76566, at *3 (S.D. Cal. Jan. 9, 2026); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772
23 (S.D. Cal. 2020) (Battaglia, J.); *Mardian v. Mayorkas*, No. 25-CV-3467-JLS, 2026
24 WL 92064, at *3 (S.D. Cal. Jan. 13, 2026) (granting petition for arriving noncitizen,
25 even though the government made this argument); *Raeva v. Mayorkas*, No. 25-CV-
3175-JO, ECF 24 (Feb. 26, 2026) (same).

26 That is because “*Thuraissigiam* addressed a noncitizen’s right to challenge
27 admission, not detention.” *Abdul Kadir*, 2025 WL 2932654, at *4; *accord Cong v.*
28 *Noem*, 2026 WL 76566, at *3 (“Though *Thuraissigiam* limits an arriving

1 noncitizen's due process rights regarding *admission*, the court did not address the
2 issue of prolonged detention.") (emphasis added).

3 It does not follow (1) that the political branches have the absolute right to
4 *detain* arriving immigrants forever, for no reason, with no process, or (2) that
5 arriving noncitizens have only those rights regarding *detention* that Congress
6 chooses to provide. "Nowhere in that decision did the Supreme Court suggest that
7 arriving aliens being held under § 1225(b) may be held indefinitely and
8 unreasonably with no due process implications, nor that such aliens have no due
9 process rights whatsoever." *A.L. v. Oddo*, 761 F. Supp. 3d 822, 825 (W.D. Pa.
10 2025). Again, Mr. Le does not ask this Court to order his legal *admission*; he merely
11 seeks an end to his prolonged detention in a prison-like environment.

12 The government's other leading Supreme Court case, *Shaughnessy v. United*
13 *States ex rel. Mezei*, 345 U.S. 206, 207-09 (1953), is even less on point. "The *Mezei*
14 Court explicitly grounded its decision in the special circumstances of a national
15 emergency and the determination by the Attorney General that Mezei presented a
16 threat to national security." *Rosales-Garcia v. Holland*, 322 F.3d 386, 413-14 (6th
17 Cir. 2003); *accord Amado*, 2025 WL 3079052, at *5 ("*Mezei* involved a noncitizen
18 who was permanently excluded from the United States on security grounds, not a
19 detainee raising their due process rights in the context of detention without a bond
20 hearing."). No one has ever deemed Mr. Le a danger or even a flight risk, much less
21 an emergency threat to national security. Indeed, that is the entire premise of this
22 petition: that the government cannot detain Mr. Le indefinitely without any
23 showing that that detention is necessary to serve a government interest.¹

24 **III. Mr. Le prevails under any due process factor standard.**

25 Finally, the government argues that Mr. Le's six months in detention—
26 without the government ever proving why detention is necessary—is not long
27

28 ¹ The Supreme Court has since called into question *Mezei*'s continued validity. *See Kydyrali*, 499 F. Supp. 3d at 772.

1 enough to have violated his due process rights. But courts have regularly granted
2 bond hearings for people detained for similar amounts of time. *Fofie v. Warden*
3 *Otay Mesa Detention Center*, No. 26-CV-1900-JLS-MSB, ECF 14 at 5 (S.D. Cal.
4 May 29, 2026) (granting bond hearing for petitioner detained over six months);
5 *Bendekaca v. Brightman*, No. 26-CV-2934-JLS-BLM, 2026 WL 1400584, at 2
6 (S.D. Cal. May 19, 2026) (collecting cases); *Amando v. United States Dep't of Just.*,
7 No. 25-CV-2687-LL-DDL, 2025 WL 3079052, at *5 (S.D. Cal. Nov. 4, 2025)
8 (collecting cases). Multiple years of detention is not required to raise a due process
9 violation.

10 While over six months of detention “does not presumptively establish
11 unreasonably prolonged detention, it is also not so little time as to preclude
12 constitutional scrutiny.” *Babaveisi v. LaRose*, No. 25-CV-3746-GPC-SBC, 2026
13 WL 76565, at *6 (S.D. Cal. Jan. 9, 2026). The length of detention does not “serve
14 as a safe harbor or insulate Petitioner’s case from constitutional review.” *Sadeqi v.*
15 *LaRose*, No. 25-CV-2587-RSH-BJW, 2025 WL 3154520, at *3 (S.D. Cal. Nov. 12,
16 2025). Thus, Mr. Le satisfies the first, and “most important factor” in assessing if a
17 bond hearing is constitutionally required. *Banda v. McAleenan*, 385 F. Supp. 3d
18 1099, 1118 (W.D. Wash. 2019).

19 As to the second factor, future delays, the government claims that because it
20 can “only speculate on when proceedings will conclude,” this factor is neutral. ECF
21 9 at 11. But the lengthy timelines for decisions in immigration cases like Mr. Le’s
22 are well documented. “While the Court cannot definitively determine the duration
23 of petitioner’s future detention, based on the current record, it appears likely
24 petitioner will face many more months and potentially years in detention,” since
25 there will likely be an appeal that case last several more months or years. *Babaveisi*,
26 2026 WL 76565, at *6 (citing *Belqasim v. Bostock*, No. 25-CV-01282-LK-TLF,
27 2025 WL 3466971, at *9 (W.D. Wash. Oct. 28, 2025), *report and recommendation*
28 *adopted sub nom. Belqasim v. Hermosillo*, No. 2:25-CV-01282-LK, 2025 WL

1 3170929 (W.D. Wash. Nov. 13, 2025). “[A] removal order may not become final
2 until after the appeals Petitioner could file, to both the Board of Immigration
3 Appeals and Ninth Circuit... These appeals can take a long time.” *Guatam v. Corr.*
4 *Corp. of Am.*, No. 3:25-CV-3600-JES-DEB, 2026 WL 25846, at *5 (S.D. Cal. Jan.
5 5, 2026); *See also Abdul-Samed*, 2025 WL 2099343, at *7 (“Although the Court
6 recognizes that future events are difficult to predict, the Court nevertheless finds
7 that in the event Petitioner’s applications for relief from removal are denied,
8 Petitioner’s possible administrative appeal and judicial review by the Ninth Circuit
9 will be sufficiently lengthy such that this factor weighs in favor of Petitioner.”).
10 Thus, this factor weighs heavily in Mr. Le’s favor.

11 Regarding delays, Respondents attempt to claim that Mr. Le has caused
12 delays, and those delays are the reason he has been indefinitely detained. ECF 9 at
13 11. But Mr. Le has not engaged in any unreasonable delay that the government can
14 support. Respondents claim delays in scheduling a master calendar hearing
15 (“MCH”) should be held against Mr. Le. *Id.* The exhibits the government attached
16 make clear that, at his first scheduled MCH, Mr. Le asked for time to secure
17 counsel—a wholly reasonable request. At the next MCH, a continuance was
18 requested for said counsel to actually prepare and file an asylum application. *See*
19 ECF 9-1, Exh. 3. That application was then filed on March 19, 2026, the next
20 scheduled date. *See id.* Respondents provide no explanation for why two more
21 MCHs have been scheduled since the filing of that petition—or why an individual
22 hearing has not yet been scheduled. There could be many reasons for this, but
23 Respondents have not provided any concrete explanation as to why that blame
24 should be placed on Mr. Le. The fact remains that Mr. Le has been detained by the
25 government for over six months in violation of due process.

26 Because these three factors, and the other factors not addressed by the
27 government, weigh in favor of Mr. Le, this Court must grant the petition.
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Respectfully submitted,

Dated: June 1, 2026

s/ Hannah Basalone

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