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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

RUSLAN ALIBEKOV

Petitioner,

v.

CHRISTOPHER LAROSE, warden of Otay Mesa Detention Center
PATRICT DIVVER, San Diego Field Office Director, Immigration and Customs Enforcement and Removal Operations ("ICE/ERO");
TODD LYONS, Acting Director of Immigration Customs Enforcement ("ICE");
MARKWAYNE MULLIN, Secretary of the Department of Homeland Security ("DHS");
ACTING Attorney General of the United States,
U.S. DEPARTMENT OF HOMELAND SECURITY;
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT;

Respondents.

Case No.: **3: 26-cv-03164-DMS-DEB**

TRAVERSE TO PETITION FOR WRIT OF HABEAS CORPUS AND ORDER TO SHOW CAUSE

[oral argument waived]

Petitioner Ruslan Alibekov, replies to Respondents' Return, stating as follows:

A. Mr. Alibekov's Classification as an "Arriving Alien" and Subjection to 8 U.S.C. § 1225(b)(1) Notwithstanding, He Has Due Process Rights Beyond Those That Congress Has Provided, and *Thuraissigiam* Does Not Bar Substantive Due Process Claims

Respondents argue that under the Supreme Court's decision in *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103 (2020), Petitioner as an "arriving alien" has no due process rights beyond those that Congress has provided. In *Thuraissigiam*, the Supreme Court rejected a habeas petitioner's argument that the due process clause conferred rights to challenge his order of expedited removal beyond those established by Congress, stating that "an alien at the threshold of initial entry cannot claim any greater rights under the Due Process Clause." 591 U.S. at 107. The petitioner in that case had "attempted to enter the country illegally and was apprehended just 25 yards from the border." *Id.*

The Supreme Court determined that the "political department of the government" had plenary authority to admit or exclude aliens seeking initial entry, and thus "an alien in respondent's position has only those rights regarding admission that Congress has provided by statute." *Id.* at 139-40. Respondents argue that because Petitioner is an "arriving alien," due process provides him nothing beyond the mandatory detention scheme established by Section 1225(b)(1).

Although, as Respondents correctly point out, following the Supreme Court's decision in *Thuraissigiam*, some district courts have adopted Respondents' reasoning to dismiss or deny habeas petitions in the context of arriving aliens subject to mandatory detention under Section 1225(b)(1)[1]. However, most courts have ruled otherwise. *See Abdul-Samed v. Warden of Golden State Annex Det. Facility*, No. 25-cv-98-SAB-HC, 2025 WL 2099343, at *6 (E.D. Cal. July 25, 2025) ("Although the Ninth Circuit has yet to take a position on whether due process requires a bond hearing for noncitizens detained under 8 U.S.C. § 1225(b) .... 'essentially all district courts that have considered the issue agree that prolonged mandatory detention pending removal proceedings, without a bond hearing, will—at some point—violate the right to due process.'") (citing *Martinez v. Clark*, No. C18-1669-RAJ-MAT, 2019 WL 5968089, at *6 (W.D. Wash. May 23, 2019)); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020) ("[T]he Court joins the majority of courts across the country in concluding that an unreasonably prolonged detention under 8 U.S.C. § 1225(b) without an individualized bond hearing violates due process.").

Recently, Judge Huie applied the same reasoning as the majority of courts, holding that a petitioner detained under Section 1225(b)(1) may assert a due

[1] E.g. *Petgrave v. Aleman*, 529 F. Supp. 3d 665, 669 (S.D. Tex. 2021) ("As far as Petitioner is concerned, whatever procedure Congress has authorized is sufficient due process."); *Gonzales Garcia v. Rosen*, 513 F. Supp. 3d 329, 336 (W.D.N.Y. 2021) ("Petitioner is on the threshold of initial entry into the United States and he accordingly is not entitled to procedural protections beyond those provided by statute.")

process challenge to prolonged mandatory detention. *Mingzhi Gao v. Larose*, No. 25-cv-2084-RSH-SBC, 2025 WL 495253, at *4 (S.D. Cal. Sep. 26, 2025).

There, the Court agreed with the majority position that a petitioner detained under Section 1225(b)(1) may assert a due process challenge to prolonged mandatory detention without a bond hearing. It agreed with those district courts that interpret *Thuraissigiam* as circumscribing an arriving alien's due process rights to admission, rather than limiting that person's ability to challenge detention. This court has made the same conclusion in *Vadim Sufiiarov v. Warden*, 25cv3265-LL-DDL (S. D. Cal Jan 6, 2026) See A.L. v. Oddo, 761 F. Supp. 3d 822, 825 (W.D. Pa. 2025) ("Nowhere in [*Thuraissigiam*] did the Supreme Court suggest that arriving aliens being held under § 1225(b) may be held indefinitely and unreasonably with no due process implications, nor that such aliens have no due process rights whatsoever."); *Hernandez v. Wofford*, No. 25-cv-986-KES-CDB (HC), 2025 WL 2420390, at *3 (E.D. Cal. Aug. 21, 2025) ("Although the Supreme Court has described Congress's power over the 'policies and rules for exclusion of aliens' as 'plenary,' and held that this court must generally 'defer to Executive and Legislative Branch decision-making in that area,' it is well-established that the Due Process Clause stands as a significant constraint on the manner in which the political branches may exercise their plenary authority'—through detention or otherwise.") (citations omitted); *Padilla v. ICE,* 704 F. Supp. 3d 1163, 1171-72 (W.D. Wash. 2023) ("The holding in *Thuraissigiam* does

not foreclose Plaintiffs' due process claims which seek to vindicate a right to a bond hearing with certain procedural protections.").

Lastly, *Mezei*[2] also does not help the government as the government does not contend that this case involves particularized national security risks or emergency regulations, as in *Mezei*, 345 U.S. at 214-16. *See Jennings v. Rodriguez*, 583 U.S. 281, 340 (2018) (Breyer, J., dissenting); *Jean v. Nelson*, 472 U.S. 846, 872 (1985) (Marshall, J., dissenting); *Mezei*, 345 U.S. at 217 (Black, J., dissenting).

Therefore, this Court should follow most courts, including its own ruling in *Sufiiarov, supra*, and including others in this district, and find that Mr. Alibekov is entitled to due process protections beyond those provided by statute.

B. The Fifth Amendment Applies to "All Persons," Including Mr. Alibekov

The Fifth Amendment's Due Process Clause applies to "all persons" within the United States. This protection is not contingent on immigration status or the "entry fiction." Petitioner's liberty interest in freedom from physical restraint is profound and protected. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011).

The Supreme court has long been solicitous of the constitutional rights of noncitizens. *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) ("The fourteenth

[2] The Court held that the Attorney General's continued exclusion of the alien without a 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.

amendment to the constitution is not confined to the protection of citizens."). Both "removable and inadmissible aliens are entitled to be free from detention that is arbitrary or capricious." *Zadvydas* at 721.

C. Judicial Forum Required for Constitutional Claims

Denying Mr. Alibekov a forum to challenge his prolonged detention would raise a "serious constitutional question" under *Webster v. Doe,* 486 U.S. 592, 603 (1988). As Judge Sabraw recognized in *Domingo-Ros v. Archambeault*, No. 25-cv-1208-DMS-DEB, 2025 WL 27541, at *2 (S.D. Cal. May 18, 2025), statutes cannot be construed to deny any judicial forum for a colorable constitutional claim. Petitioner's claim that his detention violates substantive due process is precisely such a claim.

D. Mr. Alibekov's Detention Has Become "Unreasonably Prolonged," Which Without a Bond Hearing Violates Due Process

Even before *Jennings*, many courts recognized detention became unreasonably prolonged at six months. Applying the canon of "constitutional avoidance," the Ninth Circuit has ruled that "[a]s a general matter, detention is prolonged when it has lasted six months and is expected to continue more than minimally beyond six months." *Diouf v. Napolitano*, 634 F. 3d 1081, 1092 (9th Cir. 2011). Specifically addressing mandatory detention, the court found detention at six months was "prolonged" requiring an "automatic individualized bond hearing[]" at

which the government bore the burden of persuasion as to why detention should continue. *Rodriguez v. Robbins*, 804 F.3d 1060 (9th Cr. 2015), *rev'd sub nom. Jennings,* 583 U.S. 281.

Other circuits had similarly adopted a six-month benchmark for when detention becomes constitutionally problematic. In *Lora v. Shanahan*, 804 F.3d 601 (2nd Cir. 2015), *cert. granted, judgment vacated*, 583 U.S. 1165 (2018), the court observed that "every other circuit to have considered this issue" determined that bond hearings were required after six months. *Lora v. Shanahan* at 606. *See also Ly v. Hansen*, 351 F.3d 263, 275 (6th Cir. 2003). In 2018, in *Jennings*, the Supreme Court reversed the *Rodriguez* holding that automatic bond hearings are mandated every six months as a matter of constitutional avoidance. But the Court left open the application of due process as *applied* in specific cases.

As a judge in this district assessed, "*Jennings* did not determine the constitutional question at issue here—whether arriving aliens subject to prolonged detention under 8 U.S.C § 1225(b) are entitled to a bond hearing as a matter of due process." *Kydyrali*, 499 F. Supp. 3d at 772 (citing *Jennings*, 138 S. Ct. at 851); see also *German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 210 (3d Cir. 2020)("Jennings ... left our framework for assessing as-applied constitutional challenges intact").

Many other local courts have found detention at or less than one year gives rise to due process concerns. *See, e.g.*, *Hoyos Amado*, 2025 WL 3079052, at *5 ("Courts have found detention over seven months without a bond hearing weighs toward a finding that it is unreasonable.") (collecting cases); *Tanoyan v. Andrews*, No. 1:25-CV-00815-SKO (HC), 2025 WL 3013684, at *4 (E.D. Cal. Oct. 28, 2025) ("Petitioner has been detained approximately 11 months. This period ... qualifies as prolonged."); *Gao*, 2025 WL 2770633, at *5 ("The Court finds that Petitioner's detention for over 10 months without a bond hearing, in the context of the specific circumstances described above, has become unreasonable and violates due process."); *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022) ("Petitioner has been in immigration detention ... approximately one year. District court have found shorter lengths of detention ... without a bond hearing to be unreasonable.") (collecting cases). Therefore, Mr. Alibekov's prolonged detention without an individualized bond hearing violates substantive due process. This Court must apply the *Kydyrali* factors (recently applied by Judge Huie in *Mingzhi Gao*).

The *Kydyrali* factors favor the release of the Mr. Alibekov as follows:

Duration of Detention

First, Mr. Alibekov has been detained since July 27, 2025. This is an "unreasonably prolonged" period and the lack of any individualized assessment or

prospect for release makes the detention inherently punitive and unconstitutional under *Mathews v. Eldridge*, 424 U.S. 319 (1976).

Government's Interest

Second, the government's interest is minimal. Respondents make no allegation of danger to the community or flight risk. They offer no justification beyond the bare assertion of mandatory detention. Policy quotas or administrative convenience are insufficient interests to override liberty interests. (*Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017) - noting staggering detention costs). Respondents initially gave Mr. Alibekov a Credible Fear Interview and DHS determined that he did have a credible fear and allowed him to move forward with an asylum application. His Notice to Appear was finally filed and his first Master Calendar was 09/04/2025. He was finally given an individual hearing on April 16, 2026, 7 months after his first master calendar hearing. That delay is clearly at the hands of the government.

On April 13, 2026, Mr. Alibekov's case was finally heard. However, the court denied his claim for lack of evidence. Mr. Alibekov filed an appeal. This adds at least another year to Mr. Alibekov' case. Thus, the IJ's decision will not be administratively final and he will remain subject to Section 1225(b)(1)(B)(ii).

Petitioner's Liberty Interest & Risk of Error

Mr. Alibekov has a profound liberty interest in freedom from physical restraint (Morrissey v. Brewer, 408 U.S. 471 (1972)). The risk of erroneous deprivation is high without an individualized hearing. There is no sign that he is a danger to the community or a flight risk. Mr. Alibekov has not sought a bond hearing because all the immigration judges in San Diego have held that courts lack jurisdiction to hear custody redetermination cases for detainees that entered without inspection.

Fiscal/Administrative Burden

The burden of releasing Mr. Alibekov is nil and the burden of providing a bond hearing is negligible compared to the substantial cost of detention ($158/day/detainee) and the constitutional imperative. Release is fiscally prudent and administratively simple.

Finally, under *Mathews*, the balance of factors tips sharply in favor of – at a minimum – requiring an individualized bond hearing to assess Mr. Alibekov's flight risk and dangerousness. The government's bare reliance on a statutory classification (even if applicable) cannot substitute for the individualized determination required by due process before depriving a person of liberty for a significant period. (*Kydryali*, 499 F. Supp. 3d at 772; *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1106 (W.D. Wash. 2019)).

Duration of Detention / Likelihood of Final Order of Removal

Mr. Alibekov has been detained since July 27, 2025. In addition to this being an "unreasonably prolonged" period, the lack of any individualized assessment or prospect for release makes the detention inherently punitive and unconstitutional under *Mathews*. As mentioned above, the delay in allowing his case to go forward and the delay in setting the individual hearing means that the final determination of his underlying case nearly a year away. Thus, the IJ's decision will not be administratively final and he will remain subject to Section 1225(b)(1)(B)(ii).

E. Mr. Alibekov Has a Protected Liberty Interest and the *Mathews v. Eldridge* Balancing Test Tips in his Favor

Under the test set forth in *Mathews*, this Court must consider the following three factors: "first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probative value, if any, of additional or substitute procedural safeguards; and finally the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail." See *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

The Matthews factors all favor Mr. Alibekov. The government's interest in keeping Mr. Alibekov in detention is very low, and when weighed against his

significant private interest in his liberty, the scale tips sharply in favor of releasing Mr. Alibekov from custody. Moreover, detention cannot have a punitive purpose. Respondents cannot plausibly assert an interest in continuing to detain Mr. Alibekov after almost a year of detention. There is no indication of Mr. Alibekov being a danger to the community or a flight risk.

The government's interest in detaining Mr. Alibekov is extremely low at best. That ICE has a policy to make a minimum number of arrests each day under the new administration does not constitute a valid increase in the government's interest in detaining him. Moreover, the "fiscal and administrative burdens" that release from custody would provide are nil. In fact, release from custody is far less costly than keeping Mr. Alibekov detained. As the Ninth Circuit noted in 2017, which remains even more true today, "[t]he costs to the public of immigration detention are 'staggering': $158 each day per detainee, amounting to a total daily cost of $6.5 million." *Hernandez v. Session*, 872 F.3d 976, 996 (9th Cir. 2017).

F. The balance tips in Mr. Alibekov's favor under the Lopez test as well.

Respondents contend that applying the three-factor balancing test discussed in *Lopez v. Garland*, 631 F. Supp. 3d 870 (E.D. Cal. 2022) shows that Petitioner's detention is not unreasonably prolonged. Courts in the Ninth Circuit have used various factor tests to determine whether due process requires a bond hearing in immigration detention cases, including the *Lopez* test. See e.g., *Loba L.M. v. Andrews*,

No. 1:25-CV-00611 JLT SAB (HC), 2025 WL 3187577, at *1 n.1 (E.D. Cal. Nov. 14, 2025). In the *Lopez* test, the court considers "the total length of detention to date, the likely duration of future detention, and the delays in the removal proceedings caused by the petitioner and the government." *Lopez,* 631 F. Supp. 3d at 879. Petitioner has been in immigration detention since July 27, 2025, which is nearly one year. Courts have found detentions of similar and shorter duration without a bond hearing weigh toward a finding that they are unreasonable. See, e.g., *Sadeqi v. LaRose,* 2025 WL 3154520, at *4 (finding detention of over eleven months weighs toward a finding of unreasonableness); *Tonoyan v. Andrews*, No. 1:25-CV-00815-SKO (HC), 2025 WL 3013684, at *4 (E.D. Cal. Oct. 28, 2025) (over eleven months); *Lopez,* 631 F. Supp. 3d at 879 (approximately one year); *Masood v. Barr,* No. 19-CV-07623-JD, 2020 WL 95633, at *3 (N.D. Cal. Jan. 8, 2020) (nearly nine months); *Cabral v. Decker,* 331 F. Supp. 3d 255, 261 (S.D.N.Y. 2018) (over seven months). Therefore, the Court should find the length of detention weighs in favor of Petitioner.

Next, the Court should consider the likely duration of future detention. Mr. Alibekov's case has already been denied and he has filed an appeal with the BIA. This will add at least six months to a year for resolution. Although it is unclear when removal proceedings will conclude, it will likely be a substantial amount of time. The Court should find this factor weighs in favor of Petitioner. Finally, the Court must consider whether delays in the removal proceedings were caused by

Petitioner or the government. Currently, the longest delay seems to be from the government. Removal proceedings were not initiated until September, 2025. This is two months after Mr. Alibekov was initially detained. The next longest delay is the four months between the last master calendar hearing and the date of the individual hearing. There is potentially no end in sight to Mr. Alibekov's detention. The Court must find this delay factor weighs slightly in favor of Petitioner.

G. The Petition Meets All Habeas Rule 2(c) Requirements

- Rule 2(c) Compliance: Petition "specifies all the grounds for relief" and "states the facts supporting each ground."

- Specific Factual Allegations:

Detention duration: Nearly 10 months as of January 2026.

No individualized assessment of flight risk or danger to community.

Government delays: Six months just to begin removal proceedings and another 4 months to set an individual hearing.

This court should find in the Petitioner's favor and grant the petition.

Dated: June 8, 2026

/s/Brian J. McGoldrick
Brian J. McGoldrick
Attorney for Petitioner

I, Brian J. McGoldrick, CERTIFY

I am over the age of 18 and not a party to this matter. My business address is 4916 Del Mar Avenue, San Diego, CA 92107. On June 8, 2026, I served a copy of this

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by the method and to the parties listed below:

On June 8, 2026, I accessed the electronic mailing list for CM/ECF users in this case and representatives of all parties are CM/ECF users and are noticed as follows:

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