

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

**Youssef Naseif v. Christopher J. LaRose, Senior Warden, Otay Mesa
Detention Center, et al.**

Naseif · No. 26-cv-30-RSH-BJW · Decided January 21, 2026

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 SOUTHERN DISTRICT OF
CALIFORNIA 10 11 YOUSSEF NASEIF, Case No.: 26-cv-30-RSH-BJW 12 Petitioner, ORDER
GRANTING PETITION 13 v. FOR WRIT OF HABEAS CORPUS 14 CHRISTOPHER J.
LAROSE, Senior Warden, Otay Mesa Detention Center, et al., 15 Respondents. 16 17 18 On
January 4, 2026, petitioner Youssef Naseif filed a petition for writ of habeas 19 corpus pursuant to
28 U.S.C. § 2241 (the “Petition”).

ECF No. 1. 20 Petitioner, a citizen of Egypt, is detained by U.S. Customs and Immigration 21
Enforcement (“ICE”) at the Otay Mesa Detention Center in San Diego, California. Id. ¶¶ 22 3, 4.
As set forth below, the Court grants the Petition. 23 I. BACKGROUND 24 On November 29,
2024, Petitioner crossed the U.S.-Mexico border and was 25 apprehended by DHS. Id. ¶ 18; ECF
No. 5 at 2.

He was taken into immigration custody. 26 ECF No. 1 ¶ 18. Thereafter, he was interviewed by an
asylum officer, who determined that 27 Petitioner had a credible fear of persecution if returned to
Egypt. ECF No. 5 at 2. Petitioner 28 was issued a notice to appear and placed in removal
proceedings. Id. 1 Although Petitioner has had individual merits hearings scheduled five times, his
2 hearings have been cancelled or reset by the court, and he has not yet received an individual 3
merits hearing on his claims for relief.

ECF No. 1 ¶¶ 19-21. His individual merits hearing 4 is currently scheduled for March 30, 2026.
ECF No. 5 at 2. 5 Petitioner alleges that his continued detention for approximately 14 months
without 6 a bond hearing violates his right to due process. ECF No. 1 ¶¶ 40-47. Respondents have
7 filed a return. ECF No. 5. 8 II. LEGAL STANDARD 9 Title 28 of the U.S. Code, Section 2241,
provides that “[w]rits of habeas corpus may 10 be granted by the Supreme Court, any justice
thereof, the district courts and any circuit 11 judge within their respective jurisdictions.” 28 U.S.C.
§ 2241(a).

A detainee bears the 12 burden of demonstrating that “[h]e is in custody in violation of the
Constitution or laws or 13 treaties of the United States[.]” 28 U.S.C. § 2241(c)(3). 14 III.
ANALYSIS 15 Petitioner is currently detained pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii), which 16

provides that noncitizens found to have a credible fear of persecution are subject to 17 mandatory detention pending consideration of an asylum application.

See 8 U.S.C. § 18 1225(b)(1)(B)(ii) (“If the officer determines at the time of the interview that an alien has a 19 credible fear of persecution ... the alien shall be detained for further consideration of the 20 application for asylum.”).

The issue presented here is whether, in the circumstances of this 21 case and at this point in time, applying this mandatory detention regime violates 22 Petitioner’s due process rights. 23 A. Jurisdiction 24 Respondents first challenge this Court’s jurisdiction to hear the Petition, relying on 25 8 U.S.C. § 1252(g). That provision states that, except as otherwise provided in Section 26 1252, and notwithstanding any other provision of law including 8 U.S.C. § 2241, “no court 27 shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from 28 the decision or action by the Attorney General to commence proceedings, adjudicate cases, 1 or execute removal orders against any alien under this chapter.” Respondents argue that 2 because Petitioner challenges his detention during removal proceedings, that detention 3 “arises from” the Attorney General’s decision to commence such proceedings.

ECF No. 5 4 at 4. 5 The Supreme Court has interpreted the jurisdiction-stripping provision in Section 6 1252(g) provisions narrowly, limiting it to “three discrete actions”: the “‘decision or action’ 7 to ‘commence proceedings, adjudicate cases, or execute removal orders.’” *Reno v. Am.–* 8 *Arab Anti–Discrimination Comm.*, 525 U.S. 471, 482 (1999) (quoting 8 U.S.C. § 1252(g)).

9 The Supreme Court noted that “[t]here are of course many other decisions or actions that 10 may be part of the deportation process.” *Id.* In a later decision, the Court explained that it 11 did not interpret Section 1252(g) “to sweep in any claim that can technically be said to 12 “arise from” the three listed actions of the Attorney General. Instead, we read the language 13 to refer to just those three specific actions themselves.” *Jennings v. Rodriguez*, 583 U.S. 14 281, 294 (2018).

15 Here, Petitioner is seeking to review the legality of his detention, arguing that the 16 length of time he has been detained here violates due process—rather than challenging the 17 decision to commence proceedings, the adjudication of his removal case, or an action to 18 execute his removal order. He does not seek to litigate in this Court questions of whether 19 he is removable or whether he is entitled to relief from removal.

The relief he seeks here is 20 release from custody or a bond hearing at which his release may be considered by an 21 immigration judge. The Court concludes that Petitioner’s claim is not barred by Section 22 1252(g). 23 B. Whether Petitioner Has a Due Process Claim 24 Respondents argue that under the Supreme Court’s decision in *Department of* 25 *Homeland Security v. Thuraissigiam*, 591 U.S. 103 (2020), Petitioner has no due process 26 rights beyond those that Congress has provided, and that his due process claim therefore 27 fails.

ECF No. 5 at 6-8. 28 In *Thuraissigiam*, the Supreme Court rejected a habeas petitioner’s argument that 1 the due process clause conferred rights to challenge his expedited removal beyond those 2 established by Congress, stating that “an alien at the threshold of initial entry cannot claim 3 any greater rights under the Due Process Clause.” 591 U.S. at 107.

The petitioner in that 4 case had “attempted to enter the country illegally and was apprehended just 25 yards from 5 the border.” *Id.* The Supreme Court determined that the “political department of the 6 government” had plenary authority to admit or exclude aliens seeking initial entry, and thus 7 “an alien in respondent’s position has only those rights regarding admission that Congress 8 has provided by statute.” *Id.* at 139–40.

9 Following the Supreme Court’s decision in *Thuraissigiam*, some district courts have 10 adopted Respondents’ reasoning to dismiss or deny habeas petitions in the context of 11 arriving aliens subject to mandatory detention under Section 1225(b)(1). See *Petgrave v. 12 Aleman*, 529 F. Supp. 3d 665, 679 (S.D. Tex. 2021) (“As far as Petitioner is concerned, 13 whatever procedure Congress has authorized is sufficient due process.”); *Gonzales Garcia 14 v. Rosen*, 513 F. Supp. 3d 329, 536 (W.D.N.Y.

2021) (“Petitioner is on the threshold of 15 initial entry into the United States and... he accordingly is not entitled to procedural 16 protections beyond those provided by statute.”). 17 Most courts have ruled otherwise. See *Abdul-Samed v. Warden of Golden State 18 Annex Det. Facility*, No. 25-cv-98-SAB-HC, 2025 WL 2099343, at *6 (E.D. Cal. July 25, 19 2025) (“Although the Ninth Circuit has yet to take a position on whether due process 20 requires a bond hearing for noncitizens detained under 8 U.S.C. § 1225(b) ... ‘essentially 21 all district courts that have considered the issue agree that prolonged mandatory detention 22 pending removal proceedings, without a bond hearing, will—at some point—violate the 23 right to due process.’”) (quoting *Martinez v. Clark*, No. C18-1669-RAJ-MAT, 2019 WL 24 5968089, at *6 (W.D.

Wash. May 23, 2019)); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 25 (S.D. Cal. 2020) (“[T]he Court joins the majority of courts across the country in concluding 26 that an unreasonably prolonged detention under 8 U.S.C. § 1225(b) without an 27 individualized bond hearing violates due process.”). This Court agrees with the majority 28 position that a person detained under Section 1225(b)(1) may assert a due process challenge 1 to prolonged mandatory detention without a bond hearing.

This Court likewise agrees with 2 those district courts that interpret *Thuraissigiam* as circumscribing an arriving alien’s due 3 process rights to admission, rather than limiting that person’s ability to challenge detention. 4 See *A.L. v. Oddo*, 761 F. Supp. 3d 822, 825 (W.D. Pa. 2025) (“Nowhere in [*Thuraissigiam*] 5 did the Supreme Court suggest that arriving aliens being held under § 1225(b) may be held 6 indefinitely and unreasonably with no due process

implications, nor that such aliens have 7 no due process rights whatsoever.”); *Hernandez v. Wofford*, No. 25-cv-986-KES-CDB 8 (HC), 2025 WL 2420390, at *3 (E.D.

Cal. Aug. 21, 2025) (“Although the Supreme Court 9 has described Congress’s power over the ‘policies and rules for exclusion of aliens’ as 10 ‘plenary,’ and held that this court must generally ‘defer to Executive and Legislative 11 Branch decisionmaking in that area,’ it is well-established that the Due Process Clause 12 stands as a significant constraint on the manner in which the political branches may 13 exercise their plenary authority’—through detention or otherwise.”) (citations omitted); 14 *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1171–72 (W.D.

Wash. 2023) (“The holding in 15 *Thuraissigiam* does not foreclose Plaintiffs’ due process claims which seek to vindicate a 16 right to a bond hearing with certain procedural protections.”). 17 C. Whether Petitioner’s Detention is Prolonged in Violation of Due Process 18 In arguing that his detention has become prolonged, Petitioner cites a case from this 19 district that analyzes the issue in terms of a six-factor balancing test used by some district 20 courts.

See ECF No. 1 ¶ 40; *Kydyrali*, 499 F. Supp. 3d at 773–74 (citing *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1106 (W.D. Wash. 2019)). That test considers: (1) the 22 total length of detention to date; (2) the likely duration of future detention; (3) conditions 23 of detention; (4) delays in the removal proceedings caused by the detainee; (5) delays in 24 the removal proceedings caused by the government; and (6) the likelihood that the removal 25 proceedings will result in a final order of removal.

See *Kydyrali*, 499 F. Supp. 3d at 773– 26 74. 27 Here, Petitioner has been detained for approximately 14 months. Respondents argue 28 that “[i]n general, as detention continues past a year, courts become extremely wary of 1 permitting continued custody absent a bond hearing.” ECF No. 5 at 8 (quoting *Sibomana 2 v. LaRose*, No. 22-cv-933-LL-NLS, 2023 WL 3028093, at *4 (S.D.

Cal. Apr. 20, 2023)). 3 This proposition, applied to Petitioner’s length of detention, favors a bond hearing. The 4 fact that courts have granted habeas relief in some other cases involving longer periods of 5 detention does not indicate that Petitioner is ineligible for such relief; still other courts have 6 granted habeas relief in cases involving shorter periods of detention.¹ 7 The reasons for the delays to date favor Petitioner.

Petitioner argues, and 8 Respondents do not dispute, that he has had individual merits hearings calendared five 9 times, but that no hearing has taken place yet because the immigration court has cancelled 10 or reset hearings; and that his case has been re-assigned to a new immigration judge four 11 times. ECF No. 1 ¶ 20. There is no indication in the record that Petitioner himself is 12 responsible for these delays.

The conditions of confinement also favor Petitioner; courts in 13 this district have found that conditions at the Otay Mesa Detention Center are 14 “indistinguishable from penal confinement,” and that this factor weighs in favor of 15 petitioners’ due process arguments of prolonged detention. *Kydyrali*, 499 F. Supp. 3d at 16 773; see *Hoyos Amado*, 2025 WL 3079052, at *6.

The likely duration of future detention 17 also favors Petitioner. His first scheduled merits hearing has yet to occur; even if the 18 hearing goes forward as scheduled on March 30, 2026, and the immigration judge 19 20 21 1 See, e.g., *Hoyos Amado v. U.S. Dep’t of Justice*, No. 25-cv-2687-LL-DDL, 2025 WL 3079052, at *5 (S.D. Cal. Nov. 4, 2025) (“Courts have found detention over seven months 22 without a bond hearing weighs toward a finding that it is unreasonable.”) (collecting cases); 23 *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 ... 24 qualifies as prolonged.”); *Gao v. LaRose*, No. 25-cv-2084-RSH-SBC, 2025 WL 2770633, 25 at *5 (S.D. Cal. Sept. 26, 2025) (“The Court finds that Petitioner’s detention for over 10 months without a bond hearing, in the context of the specific circumstances described 26 above, has become unreasonable and violates due process.”); *Lopez v. Garland*, 631 F. 27 Supp. 3d 870, 879 (E.D.

Cal. 2022) (“Petitioner has been in immigration detention ... approximately one year. District courts have found shorter lengths of detention ... without 28 | || adjudicates Petitioner’s case on the merits and finds him removable without granting any 2 relief, Petitioner is entitled to appeal that order.

The Parties do not address the likelihood 3 the removal proceedings will result in a final order of removal, and the Court treats 4 || this factor as neutral. On balance, the Court determines that the applicable factors indicate 5 Petitioner’s detention without a bond hearing has become unreasonable and violates 6 || due process. 7 Petitioner is entitled to a prompt and individualized bond hearing, at which 8 || Respondents must justify his continued detention by a showing of clear and convincing 9 || evidence that Petitioner would likely flee or pose a danger to the community if released.

10 || See *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011), abrogated on other grounds by 11 || *Jennings v. Rodriguez*, 583 U.S. 281 (2018) (explaining that “the substantial liberty interest 12 stake” warranted placing the burden on the government to “prove by clear and 13 convincing evidence that an alien is a flight risk or a danger to the community to justify 14 || denial of bond”); see also *Martinez v. Clark*, 124 F 4th 775, 785-86 (9th Cir.

2024) (stating 15 || that “the BIA properly noted that the government bore the burden to establish by clear and 16 ||/convincing evidence that Martinez is a danger to the community” with respect to a bond 17 || hearing for a noncitizen detained under § 1226(c)). 18 CONCLUSION 19 For the

foregoing reasons, the Petition is GRANTED. Respondents are directed to 20 |/arrange an individualized bond hearing for petitioner Youssef Naseif before an 21 ||immigration court within fourteen (14) days of this order as described above.

The Court 22 || VACATES the hearing date set for January 29, 2026. 23 IT IS SO ORDERED. 24 || Dated: January 21, 2026 25 ° □□□ rh Howe %6 Hon. Robert S. Huie United States District Judge 27 28