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7  
8 IN THE UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA

10 ABDULAZIZ ABDURAIMOV,

11 Petitioner,

12 v.

13 TONYA ANDREWS, Facility Administrator of  
Golden State Annex Detention Facility

14 Respondent.  
15

CASE NO. 1:25-CV-00843 EPG

RESPONDENT'S RETURN AND MOTION TO  
DISMISS PETITION FOR WRIT OF HABEAS  
CORPUS

16  
17 **I. INTRODUCTION**

18 The Petitioner, Abdulaziz Abduraimov, has been detained since October 10, 2023, and he is  
19 "detained pending a decision on whether the alien is to be removed from the United States" under 8  
20 U.S.C. § 1225(b)(2)(A). ECF No. 1 at ¶¶ 2, 11; Decl. of Charles Gallenkamp at ¶¶ 8-9. Abduraimov  
21 applied for admission to the United States upon crossing the border at Calexico, Mexico on July 10,  
22 2023, and was given conditional parole, and given a notice to appeal ("NTA") placing him in removal  
23 proceedings and charging him with removability under 8 U.S.C. § 1182(a)(7)(A)(i)(I). Gallenkamp  
24 Decl. at ¶ 6; Exhs. 1, 2. On October 10, 2023, ICE detained Abduraimov after determining that he was a  
25 threat to border security. Gallenkamp Decl. at ¶¶ 8-9; Exh. 3. In these circumstances, his continued  
26 detention is both justified and reasonable.  
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1 **II. BACKGROUND**

2 **A. Arrival, detention, and immigration proceedings**

3 Petitioner, a native and citizen of Uzbekistan, applied for admission into the United States from  
4 Mexico on July 10, 2023. ECF No. 1 at ¶ 3; Gallenkamp Decl. at ¶ 5; Exh. 1. DHS issued Petitioner a  
5 NTA placing him in removal proceedings and charging him with removability under 8 U.S.C.  
6 § 1182(a)(7)(A)(i)(I) as an immigrant without the documents required by 8 U.S.C. § 1181(a).  
7 Gallenkamp Decl. at ¶ 6, Exhs. 1-2. Petitioner was paroled into the United States pending an  
8 immigration court hearing. Gallenkamp Decl. at ¶ 7, Exh. 1.

9 On October 10, 2023, ICE located and detained the Petitioner upon a determination that the  
10 Petitioner was a threat to border security pursuant to a warrant. ECF 1 at ¶¶ 2, 11; Gallenkamp Decl. at  
11 ¶ 8; Exhs. 3, 5. DHS detained Petitioner under 8 U.S.C. § 1226. Gallenkamp Decl. at ¶ 9; Exhs. 4-5.  
12 While detained, Petitioner requested and received two continuances between November 2023 and  
13 January 2024 to seek representation. Gallenkamp Decl. at ¶ 10.

14 On February 20, 2024, Petitioner filed an Application for Asylum, Withholding of Removal, and  
15 Protection under the Convention Against Torture. (“Asylum Application”). ECF 1 at ¶ 12. Starting in  
16 April 2024, the Immigration Judge held several days of hearings on the Asylum Application. ECF 1 at  
17 ¶¶ 12-13; Gallenkamp Decl. at Exh. 8. Petitioner filed a motion for a bond hearing on April 18, 2024,  
18 that the Immigration Judge properly denied for lack of jurisdiction. ECF 1 at ¶ 13.

19 On January 23, 2025, the Immigration Judge granted Petitioner’s application for relief.  
20 Gallenkamp Decl. at ¶ 12; Exh. 9. DHS filed an appeal of the Immigration Judge’s decision with the  
21 Board of Immigration Appeals (BIA), who on March 17, 2025, set a briefing schedule for all parties to  
22 submit their briefs on April 7, 2025. Gallenkamp Decl. at ¶¶ 13-14; Exhs. 10, 11. On the briefing  
23 deadline, Petitioner requested an extension on his brief, that the BIA granted on April 9, 2025, extending  
24 the briefing schedule for both parties to April 28, 2025 and both parties timely filed their briefs.  
25 Gallenkamp Decl. at ¶¶ 14-15; Exhs. 11, 12. On August 19, 2025, the BIA remanded the record to the  
26 Immigration Judge. Gallenkamp Decl. at ¶ 16; Exh. 13.

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1 the United States but has not been admitted “is treated as ‘an applicant for admission.’” *Jennings v.*  
2 *Rodriguez*, 583 U.S. 281, 287 (2018). Regardless of whether the applicant receives full or expedited  
3 review, he or she is not entitled to immediate release. *Dep’t of Homeland Sec. v. Thuraissigiam*, 591  
4 U.S. 103, 111 (2020). The noncitizen “shall be detained pending a final determination of credible fear of  
5 persecution and, if found not to have such a fear, until removed.” *Id.* (citing 8 U.S.C.A.  
6 § 1225(b)(1)(B)(iii)(IV)). Likewise, applicants who are found to have a credible fear may also be  
7 detained pending further consideration of their asylum applications. *Id.* (citing 8 U.S.C.A.  
8 §1225(b)(1)(B)(ii)). In either case, the applicant must be detained until the conclusion of those  
9 proceedings. *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018).

10 Section 1225(b)(2) “applies to all applicants for admission not covered by § 1225(b)(1).”  
11 *Jennings*, 583 U.S. at 287. Under § 1225(b)(2), a noncitizen “who is an applicant for admission” is  
12 subject to mandatory detention pending full removal proceedings “if the examining immigration officer  
13 determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted.”  
14 8 U.S.C. § 1225(b)(2)(A) (requiring that such noncitizens “be detained for a proceeding under section  
15 1229a of this title”); *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (explaining that proceedings  
16 under section 1229a are “full removal proceedings under section 240 of the INA”); *see also id.* (“[F]or  
17 aliens arriving in and seeking admission into the United States who are placed directly in full removal  
18 proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention ‘until  
19 removal proceedings have concluded.’”) (citing *Jennings*, 583 U.S. at 299). DHS has the sole  
20 discretionary authority to temporarily release on parole “any alien applying for admission to the United  
21 States” on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.” *Id.*  
22 § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

23 The Supreme Court has upheld the constitutionality of subjecting aliens to continued mandatory  
24 detention while they took additional time to obtain documents to support their applications for relief or  
25 appealed adverse decisions, writing:

26 [Petitioner] contends that the length of detention required to appeal may  
27 deter [noncitizens] from exercising their right to do so. As we have  
28 explained before, however, “the legal system . . . is replete with situations  
requiring the making of difficult judgments as to which course to follow,”  
and, even in the criminal context, there is no constitutional prohibition

1 against requiring parties to make such choices.

2 *McGautha v. California*, 402 U. S. 183, 213 (1971) (internal quotation marks omitted); *accord*, *Chaffin*  
3 *v. Stynchcombe*, 412 U. S. 17, 30–31 (1973). *Id.* at 530 n.14; *accord*, e.g., *Doherty v. Thornburgh*, 943  
4 F.2d 204, 211 (2d Cir. 1991) (holding in connection with noncitizen habeas petitioner who was confined  
5 without bail for eight years that “[petitioner] has exercised skillfully his rights under the deportation  
6 statute, delaying and perhaps preventing the outcome sought by the government. . . . Although this  
7 litigation strategy is perfectly permissible, we hold that [petitioner] may not rely on the extra time  
8 resulting therefrom to claim that his prolonged detention violates substantive due process.”); *Rivas*  
9 *Avalos v. Sessions*, No. 18-cv-02342-HSG, 2018 WL 11402701, at \*2 (N.D. Cal. May 25, 2018) (“delay  
10 caused by petitioner’s litigation strategy ‘does not ripen his detention into a constitutional claim’”)  
11 (quoting *Manley v. Delmonte*, No. 17-CV-953, 2018 WL 2155890, at \*2–3 (W.D.N.Y. May 10, 2018)).

12 To the extent the Petitioner is attempting to litigate the conditions of his confinement, he is  
13 constitutionally detained pursuant to the statutory detention scheme for alien, removable aliens, and the  
14 delays in adjudicating his removal have been caused by the Petitioner’s requests for continuances. ECF  
15 1 at ¶¶ 40-47; Gallenkamp Decl. at ¶¶ 10, 14; Exh. 12. Therefore, this Court should dismiss any claims  
16 outside of the request for a bond hearing.

17 **B. The Supreme Court has not Embraced Enhanced Due Process Beyond the Statutory**  
18 **Procedures and Avenues for Relief.**

19 1. Neither the Supreme Court nor the Ninth Circuit has adopted Due Process tests  
20 applicable to citizens in the context of mandatory detention.

21 The Supreme Court has never utilized the multi-factor “balancing test” of *Mathews v. Eldridge*,  
22 424 U.S. 319, 335 (1976), in addressing due process claims raised by noncitizens held in civil  
23 immigration detention, despite multiple opportunities to do so since *Mathews* was decided in 1976. *See*  
24 *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (“[T]he Supreme Court when  
25 confronted with constitutional challenges to immigration detention has not resolved them through  
26 express application of *Mathews*.”) (citations omitted); *id.* at 1214 (“In resolving familiar immigration  
27 detention challenges, the Supreme Court has not relied on the *Mathews* framework.”) (Bumatay, J.,  
28 concurring). Nor has the Ninth Circuit embraced the *Mathews* test. *Rodriguez Diaz*, 53 F.4th at 1206  
While leaving open the question of whether the *Mathews* test applies to a constitutional challenge to

1 immigration detention, *see Rodriguez Diaz*, 53 F.4th at 1207, the Ninth Circuit has emphasized that  
2 “*Mathews* remains a flexible test that can and must account for the heightened governmental interest in  
3 the immigration detention context.” *Id.* at 1206. Yet noncitizens subject to mandatory detention like  
4 Petitioner, who were not admitted or paroled into the country, nor physically present for at least two  
5 years on the date of inspection — as a class — lack any liberty interest in avoiding removal or to certain  
6 additional procedures. 8 U.S.C. § 1225(b). As to such noncitizens, “[w]hatever the procedure authorized  
7 by Congress . . . is due process.” *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950);  
8 *accord Thuraissigiam*, 591 U.S. at 138-139 (“This rule would be meaningless if it became inoperative as  
9 soon as an arriving alien set foot on U.S. soil.”); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (“[A]n  
10 alien seeking initial admission to the United States requests a privilege and has no constitutional rights  
11 regarding his application, for the power to admit or exclude aliens is a sovereign prerogative”); *Knauff*,  
12 338 U.S. at 542 (“At the outset we wish to point out that an alien who seeks admission to this country  
13 may not do so under any claim of right).

14 Thus, noncitizens amenable to mandatory detention while removal proceedings are pending  
15 cannot assert a protected property or liberty interest in additional procedures not provided by the statute,  
16 8 U.S.C. § 1225. *See Dave v. Ashcroft*, 363 F.3d 649, 653 (7th Cir. 2004). Instead, those noncitizens —  
17 including Petitioner — have “only those rights regarding admission that Congress has provided by  
18 statute.” *Thuraissigiam*, 591 U.S. at 140. Accordingly, Petitioner’s detention remains reasonable and is  
19 not violative of Due Process.

20 2. Petitioner’s parole did not create a *Morrissey* liberty interest.

21 Petitioner’s reliance on *Morrissey v. Brewer*, 408 U.S. 471 (1972), is misplaced. *Morrissey* arose  
22 from the due process requirement for a hearing for revocation of parole, *id.* at 472-73, and did not arise  
23 in the context of immigration. Furthermore, the Supreme Court in *Morrissey* explicitly noted “due  
24 process is flexible and calls for such procedural protections as the particular situation demands.” *Id.* at  
25 481. Accordingly, the Supreme Court has long held that “Congress regularly makes rules” regarding  
26 immigration that “would be unacceptable if applied to citizens.” *Mathews v. Diaz*, 426 U.S. 67, 79-80  
27 (1976). Being “conditionally paroled under the authority of § 1226(a)” is distinct from being “paroled  
28 into the United States under the authority of § 1182(d)(5)(A).” *Ortega-Cervantes v. Gonzales*, 501 F.3d

1 1111, 1116 (9th Cir. 2007) (holding that because release on “conditional parole” under § 1226(a) is not a  
2 parole, the alien was not eligible for adjustment of status under § 1255(a)). In this case, the Petitioner  
3 was not released on bond, and did not (and cannot) request a temporary restraining order to allow him to  
4 remain at liberty. Therefore, this Court should dismiss any claims that he is entitled to discretionary  
5 parole or that he is in the same situation as a parolee in a criminal case.

6 **C. If the Court decides to address a prolonged detention claim the Respondent requests**  
7 **application of the *Lopez* factor test.**

8 To the extent district courts recognize a Due Process requirement regarding prolonged  
9 immigration detention, there is a general lack of guidance on the appropriate test or standard to apply to  
10 a challenge to prolonged detention claims. Some courts have attempted to apply bright line rules. *See,*  
11 *e.g., Rodriguez v. Nielsen*, No. 18-cv-04187-TSH, 2019 WL 7491555, at \*6 (N.D. Cal. Jan. 7, 2019) (six  
12 months). Others, including Judge Boone recently in this district, have rejected bright-line rules, and  
13 applied the three-part test set forth in *Lopez v. Garland*, 631 F.Supp.3d 870, 879 (E.D. Cal. 2022).  
14 *Abdul-Samed v. Warden of Golden State Annex Detention Fac.*, 2025 WL 2099343 at \*5-6 (E.D.Cal.  
15 July 25, 2025) (noting courts of appeals have rejected a bright-line constitutional rule, and adopting test  
16 from *Mathews*) citing *Lopez* F.Supp.3d at 879 (adopting hybrid *Mathews* factor test)). Although the  
17 Petitioner discusses three factors from *Mathews* on whether the Petitioner is entitled to a hearing under  
18 the Due Process Clause, the Petitioner does not aid the Court in determining whether the detention  
19 without a bond hearing has been so prolonged as to violate Due Process. ECF at ¶¶ 56-69. As discussed  
20 above, Due Process for immigration detention is statutory, and governed by the *Jennings / Demore*  
21 framework, and not general Due Process principles. *See Jennings*, 583 U.S. at 312 (rejecting periodic  
22 bond hearing requirement).

23 Although each approach has its challenges,<sup>1</sup> Respondents submit that the appropriate test is what

24 <sup>1</sup> Bright line rules are plainly deficient, as they fail to acknowledge any individual circumstances  
25 of a case. *See Gonzalez v. Bonnar*, no. 18-cv-05321-JSC, 2019 WL 330906, at \*2 (N.D. Cal. Jan. 25,  
26 2019) (“[T]he Supreme Court’s decision in *Jennings* establishes there is no . . . bright-line rule. . . .  
27 [T]he decision depends on the individual circumstances of each case.”). And “while the *Mathews* factors  
28 may be well-suited to determining whether due process requires a second bond hearing, they are not  
particularly dispositive of whether prolonged mandatory detention has become unreasonable in a  
particular case.” *Sanchez-Rivera v. Matuszewski*, no. 22-cv-1357-MMA (JLB), 2023 WL 139801, at \*5  
(S.D. Cal. Jan. 9, 2023) (internal quotation omitted). Similarly, many of the elements in the eight-factor  
test are unhelpful to whether detention has become unreasonably prolonged. *See Lopez v. Garland*, 631

1 this Court previously applied in *Lopez*, 631 F.Supp.3d at 879. *See also Abdul-Samed*, 2025 WL  
2 2099343 at \*6. This test considers three factors: (1) the total length of detention to date, (2) the likely  
3 duration of future detention, and (3) the delays in the proceedings caused by the petitioner and the  
4 government. *Lopez*, 631 F.Supp.3d at 879; *see also Sanchez-Rivera*, 2023 WL 139801, at \*6 (“[T]he  
5 *Lopez* three-part test is more applicable to the instant case, where the issue turns on whether a non-  
6 citizen detainee’s prolonged detention has become so unreasonable as to require an initial bond  
7 hearing.”). These factors, applied to this case, do not demonstrate the Petitioner’s detention is  
8 unconstitutionally prolonged. Accordingly, the Court should deny the petition.

9 **I. Time in immigration custody.**

10 Petitioner has been detained for just under 23 months. Gallenkamp Decl. at ¶ 8. As the Ninth  
11 Circuit recently held in rejecting a prolonged detention challenge (under a § 1226(a) *Mathews* analysis):  
12 “[W]e cannot simply count his months of detention and leave it at that. We must also consider the  
13 process he received during that time, the further process that was available to him, and the fact that his  
14 detention was prolonged due to his decision to challenge his removal order.” *Rodriguez Diaz v. Garland*,  
15 53 F.4th 1189, 1208 (9th Cir. 2022).

16 Respondents acknowledge that when the *Lopez* court adopted the *Mathews* test, it simply  
17 counted the number of months of detention and declined to give any consideration to the history or  
18 procedural posture of the removal litigation. *See Lopez*, 631 F.Supp.3d at 880. But, as the Ninth Circuit  
19 noted in *Rodriguez Diaz*, turning such a blind eye to the history and procedural posture of the removal  
20 litigation necessarily taints a prolonged detention analysis, as simply counting up time would illogically  
21 result in rendering the statutory detention scheme “unconstitutional as to most any alien who elects to  
22 challenge a removal order, given the amount of time such a typical[] challenge takes.” *Rodriguez Diaz*,  
23 53 F.4th at 1028; *see generally Spector Motor Serv., Inc. v. McLaughlin*, 323 U.S. 101, 105 (1944)  
24 (suggesting courts should use the power to declare statutes unconstitutional only where “unavoidable”).  
25 This reasoning applies with equal force, here. The manner in which courts weigh “time in custody”

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27 F.Supp.3d 870, 879 (E.D. Cal. 2022) (“the conditions of detention, the likelihood that the removal  
28 proceedings will result in a final order of removal, whether the detention will exceed the time the  
petitioner spent in prison for the crime that made him removable, and the nature of the crimes the  
petitioner committed are not particularly suited to assisting the Court . . .”).

1 should include presumptions of constitutionality that apply where the proceedings are moving at an  
2 expected pace. *See Demore v. Kim*, 538 U.S. 510, 523 (2003) (noting the Supreme Court’s  
3 “longstanding view that the Government may constitutionally detain deportable aliens during the limited  
4 period necessary for their removal proceedings.”). While the passage of year or more may be anomalous  
5 where the alien’s removal case remains pending before the immigration judge, it is inevitable where, as  
6 here, the parties held extensive hearings and further sought administrative review by the BIA. *See, e.g.*,  
7 *Mendez-Barocio v. Valinken*, 2020 WL 13556375, at \*2-3 (E.D. Cal. Feb. 3, 2020) (holding Petitioner  
8 failed to overcome the presumption that his continued 16-months’ detention while his petition for review  
9 is pending before the Ninth Circuit); *Guangzu Zheng v. Decker*, no. 14-cv-4663(MHD), 2014 WL  
10 7190993, at \*13 (S.D.N.Y. Dec. 12, 2014) (holding detention is “reasonable, lawful, and constitutional,”  
11 where Petitioner was detained for over two years and the circuit court’s decision on his petition for  
12 review is forthcoming); *see also Prieto-Romero v. Clark*, 534 F.3d 1053, 1065 (9th Cir. 2008) (rejecting  
13 indefinite detention claim and holding § 1226(a) detention was authorized where Petitioner was detained  
14 for over three years while he sought review in the circuit court). Counting the number of months in  
15 detention without considering the procedural context is erroneous and would create a situation where  
16 detention will be routinely deemed unconstitutionally prolonged through an alien’s ordinary litigation  
17 choices.

18       The length of Petitioner’s detention is significant, but the Respondent has not unconstitutionally  
19 prolonged his detention, considering the history of the removal litigation and procedural posture.  
20 Petitioner was taken into ICE custody on October 10, 2023 and has been detained for approximately 23  
21 months since then. Gallenkamp Decl. at ¶ 8. Almost immediately, Petitioner requested two  
22 continuances to obtain counsel. Gallenkamp Decl. at ¶ 10; Exhs. 6-7. Once Petitioner obtained counsel  
23 and filed a claim for asylum, his case proceeded to hearing relatively quickly. ECF at ¶¶ 12, 14. After  
24 the Immigration Judge’s determination, DHS promptly filed an appeal and the BIA set a briefing  
25 schedule. Gallenkamp Decl. at ¶¶ 11-13, Exhs. 8-10. Thereafter, at the filing deadline, the Petitioner  
26 requested a continuance of several weeks to file the simultaneous briefs. Gallenkamp Decl. at ¶ 15.  
27 Petitioner’s removal proceedings are progressing at a pace that is appropriate for the complexity. *Cf.*  
28 *Demore*, 538 U.S. at 529 (less than 90 days for proceedings before the immigration judge for a criminal

1 alien, plus an additional five months when the noncitizen administratively appeals to the BIA). This  
2 Court should not create a body of case law where detention over a certain length automatically is  
3 deemed prolonged and requires a bond hearing in direct contravention of the Supreme Court's  
4 admonition in *Jennings*, 583 U.S. at 312. Accordingly, although Petitioner has been detained for 23  
5 months, which Respondents acknowledge is a significant period, this factor should nonetheless weigh in  
6 favor of Respondents.

7 **2. Likely duration of future detention.**

8 The litigation of Petitioner's removal case took some time, approximately 14 months from  
9 application to initial adjudication, for the initial decision of the Immigration Judge. ECF at ¶¶ 12-14;  
10 Gallenkamp Decl. Exhs. 8-9. The BIA addressed the DHS appeal in a timely manner, and remanded to  
11 the Immigration Judge, who has set a hearing for August 26, 2025. Gallenkamp Decl. at ¶ 16; Exh. 13.  
12 Thus, Petitioner's detention has "a definite and evidently impending termination point." *Soberanes v.*  
13 *Comfort*, 388 F.3d 1305, 1311 (10th Cir. 2004) ("[F]or now, his detention is clearly neither indefinite  
14 nor potentially permanent . . . it is, rather, directly associated with a judicial review process that has a  
15 definite and evidently impending termination point."); *see also Prieto-Romero*, 534 F.3d at 1065.  
16 Petitioner's removability appears to be on track for a final adjudication soon; therefore, this factor also  
17 weighs in favor of Respondents.

18 **3. Delays caused by Petitioner and by the government were minimal.**

19 "[T]he legal system is replete with situations requiring the making of difficult judgments as to  
20 which course to follow, . . . [but] there is no constitutional prohibition against requiring parties to make  
21 such choices." *Demore*, 530 n.14; *see also Rodriguez Diaz*, 53 F.4th at 1207-08 ("We . . . cannot  
22 overlook that most of the period of Rodriguez Diaz's detention arose from the fact that he chose to  
23 challenge before the BIA and later this Court the IJ's denial of immigration relief."). Petitioner's actions  
24 thus modestly delayed the litigation, which further weighs against his prolonged detention claim. *See*  
25 *Bulatov v. Hendricks*, no. 11-845 (FSH), 2012 WL 4753366, at \*7 (D.N.J. Oct. 4, 2012) (Petitioner's  
26 requests for extension of time or for leave to file noncompliant briefs accounted for delays in litigation  
27 before circuit court, which were delays appropriately attributable to Petitioner); *see also Rivas Avalos*,  
28 2018 WL 11402701, at \*2 ("delay caused by petitioner's litigation strategy does not ripen his detention

1 into a constitutional claim”) (internal quotation omitted)). The BIA promptly decided the DHS’s appeal.  
2 Gallenkamp Decl. at ¶¶ 15-16; Exhs. 12-13. Accordingly, the third and final factor weighs in favor of  
3 Respondents.

4 All three factors weigh against finding that Petitioner’s detention is unconstitutionally prolonged.  
5 Petitioner’s detention is reasonable considering that, during this time, Petitioner has exercised his rights  
6 to litigate his removal before the immigration judge, the BIA, and it appears that Petitioner is likely to  
7 continue pressing his claim. Petitioner’s litigation against his removal has proceeded apace, with modest  
8 delays attributable to Petitioner, and in rough accordance with what the Supreme Court approved in  
9 *Demore*. Therefore, Petitioner’s detention has not been unconstitutionally prolonged, and this Court  
10 should not order a bond hearing in this case.

11 **D. If the petition is granted, the only appropriate relief is a bond hearing, not release,**  
12 **with the burden of proof on Petitioner, not the government.**

13 As the Supreme Court observed in *Jennings*, nothing in § 1225(b)(2)(A) “says anything  
14 whatsoever about bond hearings.” 583 U.S. at 297. In *Jennings*, the Supreme Court explained that  
15 § 1225(b) applies to all applicants for admission, noting that the language of §1225(b)(2) is “quite clear”  
16 and “unequivocally mandate[s]” detention. 583 U.S. at 300, 303 (explaining that “the word ‘shall’  
17 usually connotes a requirement” (quoting *Kingdomware Technologies, Inc. v. United States*, 579 U.S.  
18 162, 171 (2016))). “[C]ompelled release of detainees is surely a remedy of last resort.” *Fraihat v. ICE*,  
19 16 F.4th 613, 642 (9th Cir. 2021). In the event that the petition is granted, the only appropriate relief is a  
20 bond hearing, not release from detention. *See, e.g., Demore v. Kim*, 538 U.S. at 532 (Kennedy, J.,  
21 concurring) (explaining that “an individualized determination as to his risk of flight and dangerousness”  
22 is the proper remedy “if the continued detention became unreasonable or unjustified”); *Prieto-Romero*,  
23 534 F.3d at 1065–66 (discussing how detainee “had an opportunity to contest the necessity of his  
24 detention before a neutral decisionmaker and an opportunity to appeal that determination to the BIA”);  
25 *Mansoor v. Figueroa*, No. 3:17-cv-01695-GPC (NLS), 2018 WL 840253, at \*4 (S.D. Cal. Feb. 13,  
26 2018) (IJs are well suited to assess eligibility for release, while district court “lacks the factual support to  
27 make a determination about Petitioner’s risk of flight or dangerousness to the community”).

28 Should the Court order a bond hearing, Petitioner is mistaken that the burden should be on the

1 government to justify his detention by clear and convincing evidence. The Constitution does not require  
2 the government to bear the burden of establishing that the alien will be a flight risk or danger—much  
3 less that the government be subject to a clear-and-convincing-evidence standard—to justify temporary  
4 detention pending removal proceedings. The Supreme Court, in affirming the constitutionality of  
5 detention pending removal proceedings, has not placed the burden to justify that detention by clear and  
6 convincing evidence on the government. *See Demore*, 538 U.S. at 531; *Flores*, 507 U.S. at 306; *Carlson*,  
7 342 U.S. at 538; *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). In fact, the Supreme Court has repeatedly  
8 upheld detention pending removal proceedings on the basis of a categorical, rather than individualized,  
9 assessment that a valid immigration purpose warranted interim custody. *See Demore*, 538 U.S. at 531;  
10 *Flores*, 507 U.S. at 306; *Carlson*, 342 U.S. at 538. Even in *Zadvydas*, the Court placed the burden on the  
11 alien, not the government, to show that his detention was unjustified. *Zadvydas*, 533 U.S. at 701  
12 (noncitizen must first “provide good reason to believe that there is no significant likelihood of removal  
13 in the reasonably foreseeable future,” only after which “the Government must respond with evidence  
14 sufficient to rebut that showing”).

15 Indeed, the Ninth Circuit recently questioned (in the § 1226(a) context) how the burden-shifting  
16 and standard of proof that Petitioner demands could be constitutionally required:

17           Nothing in this record suggests that placing the burden of proof on the  
18           government was constitutionally necessary to minimize the risk of error,  
19           much less that such burden-shifting would be constitutionally necessary in  
20           all, most, or many cases. There is no reason to believe that, as a general  
          proposition, the government will invariably have more evidence than the  
          alien on most issues bearing on alleged lack of future dangerousness or  
          flight risk.

21 *Rodriguez Diaz*, 53 F.4th at 1211 (9th Cir. 2022). The statutory structure of the INA creates a  
22 mandatory detention scheme. *See Jennings*, 583 U.S. at 300, 306 (noting the statute uses “shall”).  
23 Accordingly, if the Court grants Petitioner a bond hearing, the burden at any such bond hearing is  
24 properly placed on Petitioner in the first instance to show that he is not a danger or flight risk or “there is  
25 no significant likelihood of removal in the reasonably foreseeable future,” and the government may  
26 rebut the Petitioner’s evidence. *Zadvydas*, 533 U.S. at 701.

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**IV. CONCLUSION**

Petitioner has exercised his rights to fully litigate his removal before the immigration court, the BIA, and the circuit court, and this litigation has proceeded apace. Petitioner's detention during this time is constitutional and has not become unduly prolonged. Respondent respectfully requests that the Court deny Petitioner's habeas petition. If the Court concludes that Petitioner's continued detention without a bond hearing is excessive under the Due Process clause, the Respondent requests that the Court order only the requested relief of a bond hearing within 30 days.

Dated: August 22, 2025

ERIC GRANT  
United States Attorney

By: /s/ ROGER YANG  
ROGER YANG  
Assistant United States Attorney