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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ABDULLO IDIEV, Petitioner, v. WARDEN OF THE GOLDEN STATE ANNEX DETENTION FACILITY, *et al.*[1] ; Respondents.	CASE NO. 1:25-cv-01030-SKO **MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2254 AND RULE 4; RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

Respondents move to dismiss the Petition for Writ of *Habeas Corpus* filed by Abdullo Idiev on August 15, 2025, on the grounds that Petitioner, as an arriving noncitizen who is present in the United States without admission or parole, is mandatorily detained during removal proceedings, as provided by 8 U.S.C. § 1225(b). As such, Petitioner is ineligible for the custody redetermination hearing he requests,

[1] Respondent moves to strike and to dismiss all improperly-named officials under 28 U.S.C. § 2241. A petitioner seeking *habeas corpus* relief is limited to name only the officer having custody of him as the respondent to the petition. *Riego v. Current or Acting Field Office Director*, Slip Op., 2024 WL 4384220 (E.D. Cal. Oct. 3, 2024) (ordering Section 2241 petitioner, a non-citizen alien, to file a motion to amend his petition to "name a proper respondent" and setting forth that "[f]ailure to amend the petition and state a proper respondent will result in dismissal of the petition for lack of jurisdiction"). *See also* 28 U.S.C. § 2242; *Doe v. Garland*, 109 F.4th 1188, 1197 (9th Cir. 2024); *Rumsfeld v. Padilla*, 542 U.S. 426, 430 (2004); *Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 894 (9th Cir. 1996).

despite the length of his detention. Respondents therefore request that the Court dismiss the Petition or, in the alternative, deny the Petition for the reasons stated herein.

FACTUAL BACKGROUND

Petitioner is a native and citizen of Uzbekistan who applied for admission to the United States at San Ysidro, California on April 16, 2024, without valid documents to enter the United States. Decl. of Deportation Officer Lorenzo Perez ("Perez Decl.") ¶ 6; Exhibit 1 to Perez Decl. ("Ex. 1"), p. 1. The U.S. Department of Homeland Security ("DHS") initiated removal proceedings against Petitioner on May 10, 2024, charging him with inadmissibility pursuant to Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act ("INA"), because he did not possess or present a valid immigrant visa, reentry permit, border crossing identification card, or other valid entry document." *See* 8 U.S.C. §§ 1182(a)(7)(A)(i)(I); Perez Decl. ¶ 7; Ex. 1 at 1. Petitioner was initially placed into expedited removal proceedings. Perez Decl. ¶ 7. Petitioner was detained on April 16, 2024, the date he entered the United States, pursuant to 8 U.S.C. § 1225(b), and is currently in custody at the Golden States Annex located in McFarland, California. Perez Decl. ¶ 7; ECF 1.

Immediately following entry into the United States, Petitioner claimed a fear of returning to his native country of Uzbekistan and was interviewed by an asylum officer who found he had demonstrated a credible fear of future persecution or torture. Perez Decl. ¶ 8. On May 10, 2024, an asylum officer issued Petitioner a Notice to Appear, that placed him into regular removal proceedings. *Id.*; Ex. 1. Since that time, Petitioner has remained in regular removal proceedings while his asylum claim is adjudicated; no removal determination has yet been made. *See* Perez Decl. ¶ 14. Throughout the second half of 2024, Petitioner requested multiple continuances of those proceedings to seek an attorney and prepare applications for relief from removal. *Id.* On January 23, 2025, Petitioner informed the Immigration Judge he was ready to proceed to a hearing and has since presented evidence at four hearings, most recently on August 26, 2025. *Id.* ¶¶ 14-15. Another hearing date regarding Petitioner's potential removal is currently scheduled for September 19, 2025, at which Petitioner is expected to conclude his testimony and call two experts. *Id.* ¶ 15. DHS expects that one more hearing will be scheduled after September 19, 2025, to conclude the expert testimony offered by Petitioner. *Id.*

During the pendency of his removal proceedings, Petitioner also submitted five different requests for parole release—discretionary authority granted by DHS for an otherwise inadmissible noncitizen to temporarily enter the United States for various urgent reasons including humanitarian reasons or for a significant public benefit. *See generally* INA § 212(d)(5)(A); 8 C.F.R. § 212.5. DHS reviewed Petitioner's requests for parole and denied them in four instances, either because Petitioner failed to supporting documentation, or because he failed to show that he was not a danger to the community or to the security of the United States. Perez Decl. ¶¶ 9-12. Petitioner withdrew his most recent parole request submitted on May 27, 2025. *Id.* ¶ 13. To date, Petitioner has been in civil immigration detention for about seventeen months.

On August 15, 2025, Petitioner filed the instant petition for a writ of *habeas corpus* with this Court, contending that his detention since April 2024 without a hearing to assess his danger to the community or flight risk violates the Due Process Clause of the Fifth Amendment. Petitioner seeks either 1) release from immigration to detention following a hearing at which Petitioner contends it will be shown that he does not present a risk of flight or danger, or 2) in the alternative, release from immigration detention within 30 days unless Respondents schedule a hearing before an immigration judge where the Government "must establish by clear and convincing evidence that Petitioner presents a risk of flight or danger, even after consideration of alternatives to detention that could mitigate any risk that Petitioner's release would present." (ECF 1 at 16.) Petitioner also seeks a declaration that his ongoing detention violates the Due Process Clause of the Fifth Amendment, as well as costs and attorneys' fees. (*Id.*)

LEGAL ARGUMENT

A. Petitioner's Detention Is Mandated by Statute and Supreme Court Precedent

The sole ground for relief articulated in the Petition—that Petitioner's "prolonged detention without a hearing" violates the Due Process Clause of the Fifth Amendment—is foreclosed by statute and inconsistent with Supreme Court precedent. As an arriving noncitizen without a valid entry document, Petitioner is subject to mandatory detention. If a noncitizen "indicates an intention to apply for asylum . . . or a fear of persecution," immigration officers will refer the alien for a credible fear interview, as happened here. *See* 8 U.S.C. § 1225(b)(1)(A)(ii). An alien "with a credible fear of

persecution … ***shall be detained*** for further consideration of the application for asylum." 8 U.S.C. § 1225(b)(1)(B)(ii) (emphasis added). This mandatory detention may not be reconsidered by an Immigration Judge based on any alleged lack of danger or flight risk posed by the noncitizen, as the relevant regulation provides that an Immigration Judge may not redetermine the conditions of custody imposed by DHS on "[a]rriving aliens in removal proceedings" such as Petitioner. 8 C.F.R. § 1003.19(h)(2)(i)(B); *see also Matter of Jonathan Javier Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) ("[U]nder a plain language reading of section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), Immigration Judges lack authority to hear bond requests or to grant bond to aliens . . . who are present in the United States without admission.").

Petitioner's status, despite its length, is therefore mandated by statute. "As with any question of statutory interpretation, [the] analysis begins with the plain language of the statute." *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009) (citing *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004)). The INA defines an "applicant for admission" as an "alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival …) …." 8 U.S.C. § 1225(a)(1). The Supreme Court has explained that 8 U.S.C. § 1225(b)(1) is "quite clear" and "unequivocally mandate[s]" detention. *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018). Indeed, *Jennings* highlighted the express requirement of the statute and acknowledged that "the word 'shall' usually connotes a requirement." *Id.* at 303 (quoting *Kingdomware Technologies, Inc. v. United States*, 579 U.S. 162, 171 (2016)). To that end, "[r]ead most naturally, § 1225(b)(1) … thus mandate[s] detention of applicants for admission until certain proceedings have concluded," which is when "immigration officers have finished 'consider[ing]' the asylum application." *Jennings*, 583 U.S. at 283, 287.

Applicants for admission, including those referred for removal proceedings under 8 U.S.C. § 1229a after establishing a credible fear of persecution or torture, are subject to detention under 8 U.S.C. § 1225(b)(1) and are not owed a bond hearing before an Immigration Judge. 8 U.S.C. § 1225(b)(1)(B)(ii); 8 U.S.C. § 1225(b)(1)(iii)(IV) ("Any alien subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.").

In *Demore v. Kim*, 538 U.S. 510 (2003), the Supreme Court rejected a facial challenge to a noncitizen's mandatory civil detention pending removal proceedings under a different statute, 8 U.S.C. § 1226(c). In *Demore*, the Supreme Court found even prolonged mandatory detention during civil removal proceedings did not violate the U.S. Constitution's due process safeguards. 538 U.S. at 530-31. In *Demore*, while the Supreme Court recognized that mandatory detention normally lasts for a "limited period" of time, the Court held that mandatory detention could run for a much longer period while still being constitutional, for instance, where, as in this case, the noncitizen took actions to continue and lengthen his removal proceedings. *Id.* at 531. Thus, in recognizing "mandatory" detention pending removal proceedings properly may be prolonged, the Supreme Court in *Demore* flatly rejected a rule of compelled detention hearing within a fixed time. *Id.* As in *Demore*, both constitutionally and as a matter of statute, Petitioner's continued mandatory civil detention is warranted.

Despite Petitioner's argument to the contrary, no six-month timeframe applies to this detention period, either as a statutory or constitutional matter. In *Jennings v. Rodriguez*, 583 U.S. 281 (2018), the Supreme Court rejected the Ninth Circuit's interpretation that 8 USC § 1226(c)—a statute also compelling mandatory detention (as in this case under 8 U.S.C. § 1225(b))—included "an implicit 6–month time limit on the length of mandatory detention." 583 U.S. at 292-94. Prior to *Jennings*, the Ninth Circuit had held in *Rodriguez v. Robbins* that mandatory detention under 8 U.S.C. § 1225(b) was implicitly time-limited and expired after six months, citing the canon of constitutional avoidance. 715 F.3d 1137, 1138-44 (9th Cir. 2013). But *Jennings* expressly rejected that notion and found that the Ninth Circuit had misapplied the constitutional avoidance canon to find a statutory right to "periodic bond hearings every six months in which the Attorney General must prove by clear and convincing evidence that the alien's continued detention is necessary." 583 U.S. at 304, 306.

Following *Jennings*, this Court has repeatedly refused to find a specific time limit past which a noncitizen's detention will be considered presumptively violative of due process. *See, e.g.*, *Navarrete-Leiva v. U.S. Attorney General, et al.*, 1:24-cv-00938-SKO, 2024 WL 5111780 (E.D. Cal. Dec. 13, 2024) (denying petitioner's claim that the U.S. Constitution requires a bond hearing for continued detention during removal proceedings beyond six months); *Abdul-Samed v. Warden of the Golden State Annex Detention Facility*, 1:25-cv-00098, 2025 WL 2099343, at *5 (E.D. Cal. July 25,

2025) (declining to adopt a presumption of reasonableness or unreasonableness as to a period of detention).

In *Keo v. Warden of the Mesa Verde Ice Processing Center*, No. 1:24-CV-00919-HBK (HC), 2025 WL 1029392 (E.D. Cal. Apr. 7, 2025), *appeal dismissed sub nom. Keo v. Warden*, No. 25-3546, 2025 WL 2528945 (9th Cir. June 27, 2025), this Court assessed a purported due process violation by a petitioner—a lawful permanent resident who had committed a criminal violation—held under mandatory detention pursuant to a different section of the INA, 8 U.S.C. § 1226(c), who had been detained at the Mesa Verde ICE Processing Facility in Bakersfield for approximately 22 months. *Id.* at *4. The Court granted Respondents' Motion to Dismiss, finding that, despite the length of Petitioner's detention in DHS custody, his continued detention without a bond hearing was constitutional pursuant to the mandatory detention statute, so long as his ongoing removal proceedings contemplated a "definite termination point" at the conclusion of those proceedings and his detention was not indefinite. *Id.* at *8. (". . . Petitioner's detention is not indefinite; there is a definite termination point at the conclusion of his ongoing legal challenges. There is no indication that the ongoing removal proceedings do not serve their intended purpose or are intended to incarcerate him for other reasons. Therefore, the Court finds no due process violation in Petitioner's continued detention under § 1226(c) without a bond hearing . . . .") (internal quotations omitted) (citing *Jennings*, 583 U.S. 304; *Demore*, 538 U.S. at 527, 538). While the basis for mandatory detention differs here, the same reasoning applies with equal force.

B. Petitioner's Continued Detention Does Not Violate Due Process.

The Fifth Amendment entitles noncitizens to due process of law, but the Ninth Circuit interprets the Due Process Clause "consistent with longstanding precedent recognizing that the process due aliens must account for the government's countervailing interests in immigration enforcement—considerations that do not apply to U.S. citizens." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1205-06 (9th Cir. 2022). It is well-established that "Congress may make rules as to aliens that would be unacceptable if applied to citizens." *Demore v. Kim*, 538 U.S. 510, 522 (2003). This is true because "any policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government, which are core sovereign powers." *Id.* "The Supreme Court has accordingly long upheld Congress's authorization of

detention during deportation proceedings as a constitutionally valid aspect of the deportation process."[2] *Id.* at 523 (internal quotation marks and citation omitted).

The use of a multi-factor balancing test to analyze Petitioner's statutorily-compelled detention during the pendency of his removal proceedings is unsupported by Supreme Court authority. Across numerous cases involving the INA, the Supreme Court has not adopted a multi-factor balancing test for constitutional due process challenges to civil detention in removal proceedings. *See Dusenbery v. United States*, 534 U.S. 161, 168 (2002) ("(W]e have never viewed Mathews as announcing an all-embracing test for deciding due process claims."); *Demore*, 538 U.S. at 513; *Jennings*, 583 U.S. at 303 to 306; *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1214 (9th Cir. 2022) (stating "the [Supreme] Court has recently backed away from multi-factorial 'grand unified theor[ies]' for resolving legal issues").

This conclusion is particularly appropriate here where Petitioner has already been afforded process during his detention. Specifically, Petitioner has been provided four parole reviews. Perez Decl. ¶¶ 10-13. *See Navarrete-Leiva v. U.S. Attorney General, et al.*, 1:24-cv-00938-SKO, 2024 WL 5111780, *3 (E.D. Cal. Dec. 13, 2024) (finding that no consideration of the multi-factor test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976), was required where the petitioner had been provided two parole reviews).

In addition, Petitioner's detention is not indefinite. Unlike noncitizens detained under 8 U.S.C. § 1231(a)(6), where their detention could be "indefinite" and "potentially permanent," those detained under Section 1225(b) face a definite termination of their removal proceedings. *Demore v. Kim*, 538 U.S. 510, 528-29 (2003) (citing *Zadvydas v. Davis*, 533 U.S. 678, 697 (2001)); *Navarrete-Leiva*, 2024 WL 5111780, *4.

For this reason, Petitioner's reliance on *Zadvydas v. Davis*, 533 U.S. 678 (2001), is misplaced. In *Zadvydas*, the Supreme Court addressed a challenge to prolonged detention under 8 USC § 1231(a)(6) by noncitizens who had received a final order of removal from the Government and all administrative and judicial review had been exhausted, but their removal could not be effectuated because their designated countries either refused to accept them or the United States lacked a repatriation treaty with

[2] For this reason, cases cited by Petitioner that address due process considerations in the context of criminal proceedings against U.S. citizens are inapplicable. (*See, e.g.*, ECF 1 at 8.)

the receiving country. The Court explained that Section 1231(a) does not authorize indefinite detention and "limits an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal from the United States." *Zadvydas*, 533 U.S. at 689. Further, even in that context, the *Zadvydas* Court stated that a noncitizen proceeding under Section 1231(a) was still not entitled to release unless there was "no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. This case has no application here, where Petitioner's removal proceedings are still pending.

Here, Petitioner's detention period has been prolonged at least in part due to his own actions. Petitioner is seeking asylum and sought and received multiple continuances to seek an attorney and prepare applications for relief from removal. Perez Dec. ¶ 14. This factor was found noteworthy by the Supreme Court in *Demore*: "Respondent was detained for somewhat longer than the average . . . but respondent himself had requested a continuance of his removal hearing." *Demore*, 538 U.S. at 530-31; *Navarrete-Leiva*, 2024 WL 5111780, at *4.

This Court should decline to engage in any of the various multi-factor balancing tests applied by some courts in the Ninth Circuit in analyzing a noncitizen's procedural due process rights. *See generally Abdul-Samed v. Warden of the Golden State Annex Detention Facility*, 1:25-cv-00098-SAB-HC, 2025 WL 2099343, at *5 (E.D. Cal. July 25, 2025). This Court properly rejected such tests in *Keo v. Warden of the Mesa Verde Ice Processing Center*, No. 1:24-CV-00919-HBK (HC), 2025 WL 1029392, at *7 (E.D. Cal. Apr. 7, 2025), *appeal dismissed sub nom. Keo v. Warden*, 2025 WL 2528945 (9th Cir. June 27, 2025), when assessing a procedural due process claim by a petitioner held under mandatory detention pursuant to a different section of the INA, 8 U.S.C. § 1226(c). As this Court held in *Keo*, "consistent with existing Supreme Court precedent," the "threshold question" in considering Petitioner's claim of "unreasonably prolonged detention" without a bond hearing under Section 1226(c) was "whether Petitioner's continued detention serves the purported immigration purpose and has a definite termination point, as opposed to any 'balancing test' to determine whether procedural due process is due." *Id.* at *7.

Nevertheless, even if the Court were to apply a multi-factor balancing test to Petitioner's detention without a bond hearing, neither of the most common tests would favor the Petitioner.

1. The *Mathews* Test Does Not Favor Petitioner.

The traditional test for assessing procedural due process claims set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976), is a flexible test that can and must account for the heightened governmental interest in the immigration detention context. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022). Under *Mathews*, the "identification of the specific dictates of due process generally requires consideration of three distinct factors": 1) "the private interest that will be affected by the official action"; 2) "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 3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." 424 U.S. at 334-35. Even if *Mathews* were applied here, the Petitioner's claims would fail.

a. The Private Interest That Will Be Affected

The first *Mathews* factor weighs in favor of Respondents. As the Supreme Court noted in *Demore*, while decisions to prolong one's own detention may be difficult, "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 against requiring parties to make such choices." *Demore v. Kim*, 538 U.S. 510, 530 n. 14 (2003) (quoting *McGautha v. California*, 402 U. S. 183, 213 (1971). While a noncitizen's private interest in "freedom from prolonged detention" is "unquestionably substantial," *Singh v. Holder*, 638 F.3d 1196, 1208 (9th Cir. 2011), *abrogated on other grounds as recognized by Rodriguez Diaz*, 53 F.4th at 1202, the same cannot be said for freedom from all detention itself. *See, e.g.*, *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) (stating that a noncitizen is not entitled to habeas relief after the expiration of the presumptively reasonable six-month period of detention under 8 U.S.C. § 1231(a)(6) unless he can show that his detention is "indefinite"—*i.e.*, that there is "good reason to believe that there is no significant likelihood in the reasonably foreseeable future"). Here, Petitioner's detention is mandatory, in connection with his pursuit of entry into the United States without valid entry documentation and subsequent request for asylum review.

Petitioner is also an "arriving alien" who has not been admitted to the United States or paroled and has therefore spent no time in the United States outside of DHS custody. *See* Perez Decl. ¶¶ 6-7. As such, Petitioner has not developed ties to the United States.

Under the first *Mathews* factor, weight is also given to the process Petitioner received during his detention and to Petitioner's own delays which prolonged his detention. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206-07 (9th Cir. 2022); *Demore*, 538 U.S. at 530-31. In *Demore*, the Court noted the petitioner himself had requested a continuance of his removal hearing. *Id.* Here, Petitioner requested multiple continuances over the course of approximately six months. Perez Decl. ¶ 14. *Accord Aguayo v. Martinez*, 2020 WL 2395638, at *3 (D. Colo. May 12, 2020) (detention not unconstitutional where petitioner requested multiple continuances and, thus, "like the detainee in *Demore*, [his] prolonged detention is largely of his own making"). There is also no indication that Respondents have caused any delay in Petitioner's removal proceedings, and DHS did not request any continuance of those proceedings. Perez Decl. ¶ 14; *See Crooks v. Lowe*, 2018 WL 6649945, at *2 (M.D. Pa. Dec. 19, 2018) (detention not unconstitutional where "there is no indication in the record that the government has improperly or unreasonably delayed the proceedings").

Petitioner's contentions regarding poor conditions in detention do not change this analysis. "The appropriate remedy for such constitutional violations, if proven, would be a judicially mandated change in conditions and/or an award of damages, but not release from confinement." *Crawford v. Bell*, 599 F.2d 890, 892 (9th Cir. 1979). Such claims cannot be raised in a *habeas* petition, but must brought, if at all, in a civil rights action. *Brown v. Blanckensee*, 857 F. App'x 289, 290 (9th Cir. 2021); *see also Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991) (holding that a habeas petition was not "the proper method of challenging 'conditions of . . . confinement'").

b. The Risk of an Erroneous Deprivation

The second *Mathews* factor is "the risk of an erroneous deprivation of [the petitioner's] interest through the procedures used, and the probative value, if any, of additional or procedural safeguards." *Mathews*, 424 U.S. at 335. This factor does not favor Petitioner because the process of seeking relief from removal, including based on asylum, is the statutorily-created structure for those in Petitioner's circumstances. Petitioner is availing himself of that statutory structure by pursuing his claims for

asylum and withholding of removal through his removal proceedings. Four such hearings have taken place to date at which Petitioner has presented evidence, with another hearing currently set for September 19, 2025. Perez Decl. ¶ 14. As with other noncitizens seeking relief, detention is mandatory under the applicable statute while those proceedings proceed. The statute does not look to whether the noncitizen can establish that, in their particular case, they are not a flight risk or a danger to the community.

Moreover, in this instance, Petitioner took advantage of the process available to him by seeking parole on multiple occasions. DHS denied his requests in each case, either because he failed to supporting documentation, or because he failed to show that he was not a danger to the community or to the security of the United States. Perez Decl. ¶¶ 10-13. Petitioner withdrew his most recent parole request submitted on May 27, 2025. *Id.* ¶ 13.

Under these circumstances, the risk of erroneous deprivation is relatively small.

c. The Government's Interest

Under the third *Mathews* factor, "the government clearly has a strong interest in preventing noncitizens from 'remain[ing] in the United States in violation of our law.'" *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1208 (9th Cir. 2022) (quoting *Demore*, 538 U.S. at 518). Here, the Government has a strong interest in detaining the Petitioner. "Enforcement of our immigration law serves both a domestic law enforcement and foreign relations function." *Id.* "The Supreme Court has thus specifically instructed that in a *Mathews* analysis, we 'must weigh heavily in the balance that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature.'" *Id.* (quoting *Landon v. Placencia*, 459 U.S. 21, 34 (1982)). "Over no conceivable subject is the legislative power of Congress more complete." *Id.* (citing *Reno v. Flores*, 507 U.S. 292, 305 (1993)). "Through detention, the government likewise seeks to 'increas[e] the chance that, if ordered removed, the aliens will be successfully removed.'" *Id.* (quoting *Demore*, 538 U.S. at 528); *see also Nken v. Holder*, 556 U.S. 418, 436 (2009) ("There is always a public interest in prompt execution of removal orders: The continued presence of an alien lawfully deemed removable . . . permits and prolongs a continuing violation of United States law."). In addition, "[t]he risk of a detainee absconding also

inevitably escalates as the time for removal becomes more imminent." *Rodriguez Diaz*, 53 F.4th at 1208.

2. The *Lopez* Test Does Not Favor Petitioner.

This Court has periodically applied its own test, identified in *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022). Where this Court has applied *Lopez*, it has reasoned that *Mathews* is "more suited to determining whether due process requires a second bond hearing." *Abdul-Samed v. Warden of the Golden State Annex Detention Facility*, 1:25-cv-00098, 2025 WL 2099343, at *6 (E.D. Cal. July 25, 2025). The *Lopez* test considers the total length of detention to date, the likely duration of future detention, and the delays in removal proceedings caused by Petitioner and the Government.

Here, Petitioner has been detained since April 16, 2024, a period of approximately seventeen months. This amount of time is similar to what the Court found in *Abdul-Samed* to favor the petitioner. 2025 WL 2099343, at *7. However, courts should not apply a bright-line test to the length of detention, consistent with Supreme Court precedent in *Jennings* and *Zadvydas*, discussed above. Here, not only did Petitioner's requested continuances contribute to the passage of time, Petitioner has also received significant process, including four hearings in his removal proceedings, at which the Petitioner present evidence, as well as multiple requests for discretionary parole, each of which were considered by DHS or withdrawn by Petitioner. Perez Decl. ¶¶ 7-14. Petitioner's parole was ultimately denied because he failed to show that he was not a danger to the community or the security of the United States, Perez Decl. ¶ 10, a similar inquiry to what Petitioner now claims he is entitled in the form of a bond hearing.

Regarding the likely duration of future detention, this Court has recognized the difficulty in applying this factor because future events are difficult to predict. *See Abdul-Samed*, 2025 WL 2099343, at *6. That is particularly the case here, where Petitioner's removal proceedings are ongoing, following the asylum officer's determination that he had demonstrated a credible fear of persecution or torture. *See* Ex. 1, p. 1. Here, Petitioner has already presented evidence at four hearings, with the next hearing scheduled to occur in a few days and his removal proceedings likely coming to a close shortly thereafter. *See* Lopez Decl. ¶ 15. If Petitioner is granted asylum or withholding of removal in the near future, his detention will shortly end. If not, Petitioner himself may choose to appeal the removal order, thereby prolonging his detention.

Finally, any delays in removal proceedings were caused by the Petitioner, who requested and received several continuances in his removal proceedings, in order to seek an attorney and prepare applications for relief from removal. There is no evidence in the record that any delay was caused by the Government.

CONCLUSION

For the reasons set forth above, Respondents respectfully request that the Court dismiss the Petition, or, in the alternative, deny the Petition for Writ of *Habeas Corpus*.

Dated: September 17, 2025

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