

1 BRETT A. SHUMATE
Assistant Attorney General
2 Civil Division
3 DAVID J. BYERLEY
Senior Litigation Counsel
4 JAIME A. SCOTT
5 Trial Attorney
6 DC Bar # 90027182
U.S. Department of Justice, Civil Division
7 Office of Immigration Litigation
8 P.O. Box 868, Ben Franklin Station
Washington, DC 20044
9 Tel: (202) 305-3620
10 Email: Jaime.A.Scott@usdoj.gov

11
12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA

14 MAHDI ELIKAEI,

15
16 Petitioner,

Case No. 3:25-cv-03219

17 v.

18 CHRISTOPHER J. LAROSE, Senior
Warden, Otay Mesa Detention Center,
19 San Diego, California, *et al.*,

**RESPONSE IN OPPOSITION TO
PETITION FOR WRIT OF HABEAS
CORPUS; COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

20 Respondents.
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INTRODUCTION

1
2 Respondents Christopher J. LaRose, Senior Warden of Otay Mesa Detention
3 Center; Joseph Freden, Acting Field Office Director, San Diego, U.S. Immigrations
4 and Customs Enforcement (“ICE”); U.S. Department of Homeland Security
5 (“DHS”); Todd M. Lyons, Acting Director of ICE; Sirce Owen, Acting Director for
6 Executive Office for Immigration Review; DHS Secretary Kristi Noem; and
7 Attorney General Pam Bondi, in their official capacities, hereby file a response in
8 opposition to the Petition for a Writ of Habeas Corpus; Complaint for Declaratory
9 and Injunctive Relief (“Petition”) as directed by the court in its November 20, 2025
10 order. See ECF No. 4.
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14 While Petitioner claims he “poses no risk of flight and no danger from the
15 community,” he tellingly fails to mention that before illegally entering the United
16 States, Petitioner, Lieutenant Mahdi Elikaei (“Lt. Elikaei”) was an officer in the
17 Islamic Revolutionary Guard Corps (IRGC), which is a Tier I designated foreign
18 terrorist organization. Decl. ¶¶ 6–7. The IRGC is “Iran’s primary mechanism for
19 cultivating and supporting terrorist groups abroad.” *Country Reports on Terrorism*
20 *2023* (Ch. 5), U.S. Dep’t of State: Bureau of Counterterrorism
21 (<https://www.state.gov/reports/country-reports-on-terrorism-2023/>). After being
22 caught attempting to sneak into the country, Lt. Elikaei filed the instant Petition on
23 November 19, 2025, alleging that his continued detention in civil immigration
24 custody is a violation of the Fifth Amendment Due Process Clause, the U.S.
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1 Constitution, and federal laws. Pet. at 2, ECF No. 1. Lt. Elikaei seeks immediate
2 release into the United States, or in the alternative, an immediate and individualized
3 bond hearing. *Id.* at 14. The Court should deny the Petition for the following reasons.
4

5 *First*, Lt. Elikaei is lawfully held in detention pursuant to 8 U.S.C. §
6 1225(b)(1)(B)(ii), which provides for the mandatory detention of an inadmissible
7 applicant for admission who is found to have a credible fear of persecution for
8 further consideration of the application for asylum. Consequently, Lt. Elikaei is
9 properly subject to mandatory detention until “immigration officers have finished
10 properly subject to mandatory detention until “immigration officers have finished
11 consider[ing] the application for asylum.” *See Jennings v. Rodriguez*, 583 U.S. 281,
12 299 (2018) (internal quotations omitted).
13

14 *Second*, Lt. Elikaei’s mandatory detention pursuant to 8 U.S.C. § 1225 does
15 not violate the U.S. Constitution and laws. Because he was stopped at the border, Lt.
16 Elikaei possesses no inherent rights under the U.S. Constitution. Pursuant to “more
17 than a century of [Supreme Court] precedent,” inadmissible arriving aliens seeking
18 admission, like the Lt. Elikaei, have only those rights provided by statute. *See*
19 *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 138-39 (2020).
20 IRGC Lt. Elikaei has not acquired any constitutional right in this country by merely
21 being caught at the border and detained.
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25 *Third*, Lt. Elikaei has no constitutional right to a bond hearing. Section
26 1225(b) does not provide for a custody determination by this Court or a custody
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1 hearing before an immigration judge. *See also Jennings v. Rodriguez*, 583 U.S. 281,
2 297 (2018).

3 4 BACKGROUND

5 **I. Legal Background**

6 The Immigration and Nationality Act (“INA”) authorizes civil detention of
7 aliens during removal proceedings and “[d]etention is necessarily part of the
8 deportation procedure.” *Carlson v. Landon*, 342 U.S. 524, 538 (1952); *see also* 8
9 U.S.C. S 1225(b), 1226(a), and 1231(a). “Where an alien falls within this statutory
10 scheme can affect whether his detention is mandatory or discretionary, as well as the
11 kind of review process available to him if he wishes to contest the necessity of his
12 detention.” *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008).

13 The INA defines an “applicant for admission” as “[a]n alien present in the
14 United States who has not been admitted or who arrives in the United States (whether
15 or not at a designated point of arrival.)” 8 U.S.C. § 1225(a)(1); *see also Jennings v.*
16 *Rodriguez*, 583 U.S. 287 (2018). The category of “arriving alien” includes a person
17 who is “an applicant for admission coming or attempting to come into the United
18 States at a port-of-entry.” 8 C.F.R. § 1001.1(q). *See Matter of M-S-*, 27 I. & N. Dec.
19 509, 510 (A.G. 2019).

20 Section 1225(b)(1) sets forth expedited removal proceedings for certain
21 inadmissible arriving aliens, like Lt. Elikaei. An alien subject to such expedited
22 proceedings is normally ordered removed “without further hearing or review” unless
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1 he indicates an intent to apply for asylum or a fear of persecution. 8 U.S.C. §
2 1225(b)(1)(A)(i). An arriving alien who establishes a credible fear of persecution,
3
4 like Lt. Elikaei, is subject to detention pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii).

5 Notably, the INA *mandates* the detention of applicants for admission. 8
6 U.S.C. § 1225(b)(1) and (b)(2); *see also Jennings v. Rodriguez*, 583 U.S. 281, 287
7
8 (2018) (applicants for admission “fall into one of two categories, those covered by
9 § 1225(b)(1) and those covered by § 1225(b)(2).”). The mandatory detention under
10 Section 1225(b)(1)(B)(ii) continues “for so long as that review is ongoing” and “until
11 removal proceedings conclude.” *Matter of M-S-*, 27 I. & N. Dec. at 516.
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13 II. Factual Background

14 Lt. Elikaei, a native and citizen of Iran, was apprehended by Border Patrol on
15
16 January 1, 2025, following his illegal entry into the United States on the same date.
17 Decl. ¶ 5, 10. He was initially processed for expedited removal, but following a
18 determination that he had established a credible fear of torture if removed to Iran,
19
20 was served with an NTA placing him in 8 U.S.C. § 1229a removal proceedings. *Id.*
21 ¶ 12–15. Thus, Lt. Elikaei is in mandatory detention pursuant to 8 U.S.C. §
22 1225(b)(1)(B)(ii). *Id.* ¶ 24.
23

24 On October 22, 2025, an Immigration Judge denied Lt. Elikaei’s applications
25 for asylum, statutory withholding of removal, withholding of removal under the
26 CAT, and deferral under the CAT and ordered that he be removed to Iran. *Id.* ¶ 19.
27
28 He appealed to the Board of Immigration Appeals on November 17, 2025, and as

1 such, his removal order cannot be effectuated until such time as the appeal is
2 dismissed. *Id.* ¶ 22–23.

3
4 Prior to Lt. Elikaei’s illegal entry, he served as a lieutenant in the Islamic
5 Revolutionary Guard Corps (“IRGC”). *Id.* ¶ 6. By way of background, the “IRGC .
6 . . . is the military arm of a kind of shadow government answering directly to the
7 Ayatollah and the mullahs who hold power in Iran. It is similar to the Nazi party’s
8 SA [Sturmabteilung] organization prior to World War II. The IRGC actively
9 supports terrorism as a means of protecting the Islamic revolution that brought the
10 Ayatollah to power in Iran in 1979.” *Rimkus v. Islamic Republic of Iran*, 575 F.
11 Supp. 2d 181, 187 (D.D.C. 2008). The IRGC has been involved in violence and
12 terror for decades. *See FAQs for Iranian Applicants*, U.S. VIRTUAL EMBASSY IRAN
13 (<https://ir.usembassy.gov/faqs-for-iranian-applicants>) (visited December 5, 2025).

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17 As such, on April 15, 2019, the State Department formally designated the IRGC a
18 “Tier I” Foreign Terrorist Organization (“FTO”) under 8 U.S.C. § 1189. *See In re*
19 *Designation of the IRGC (and Other Aliases) as a Foreign Terrorist Organization*,
20 84 Fed. Reg. 15278 (Apr. 15, 2019). This designation was based on nearly four
21 decades of terrorist activity, and came twenty-five years after Iran was first
22 designated by the U.S Department of State as a state sponsor of terrorism on January
23 19, 1984. *State Sponsors of Terrorism*, U.S. DEPARTMENT OF STATE
24 (<https://www.state.gov/state-sponsors-of-terrorism/>) (visited May 4, 2024). Iran and
25 its terror proxies frequently attempt to exploit vulnerabilities in the U.S. southern
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1 border. *An Examination of the Iranian Regime's Threats to Homeland Security*, H.R.
2 Rep. 118-35 (2023).

3 STANDARD OF REVIEW

4 **III. Writ of Habeas Corpus**

5 It is axiomatic that “[t]he district courts of the United States . . . are courts of
6 limited jurisdiction. They possess only that power authorized by Constitution and
7 statute.” *Exxon Mobil Corp. v. Allopach Servs., Inc.*, 545 U.S. 546, 552 (2005)
8 (internal quotation omitted). Title 28 U.S.C. § 2241 provides district courts with
9 jurisdiction to hear federal habeas petitions. A petitioner bears the burden to prove
10 he is entitled to the granting of the writ of habeas corpus by demonstrating that his
11 custody violates the Constitution, laws, or treaties of the United States. *See* 28 U.S.C.
12 § 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004); *Snook v.*
13 *Wood*, 89 F.3d 605, 609 (9th Cir. 1996).

14 ARGUMENT

15 **I. Petitioner Is Lawfully Detained In Mandatory Detention Pursuant** 16 **to 8 U.S.C. § 1225(b)(1)(B)(ii).**

17 IRGC Lt. Elikaei is lawfully detained pursuant to 8 U.S.C. §
18 1225(b)(1)(B)(ii). Lt. Elikaei entered the United States illegally where he was
19 encountered by Border Patrol and served with an order of expedited removal
20 pursuant to 8 U.S.C. § 1225(b)(1). Decl. ¶¶ 10–12. Because Lt. Elikaei later received
21 a positive credible fear determination, he was issued a Notice to Appear for 8 U.S.C.
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1 § 1229a removal proceedings. *Id.* ¶ 14–15. The issuance of the NTA did not convert
2 Lt. Elikaei’s detention to a discretionary detention authority with the possibility of
3 bond, *see Luna Banegas v. McDonald*, No. 1:25-cv-13161-NMG, 2025 WL
4 3251395, at *2 (D. Mass. November 21, 2025) (“nothing in the statutory scheme
5 indicates that an alien in § 1229 proceedings is to be detained under § 1226.”), but
6 rather to the mandatory detention authority of 8 U.S.C. § 1225(b)(1)(B)(ii) which
7 calls for the detention of individuals “for further consideration of the application for
8 asylum.” And, even if his detention did switch to § 1226, it would not flip to a
9 discretionary § 1226(a) authority, as Lt. Elikaei’s detention would still be mandatory
10 given his IRGC service. 8 U.S.C. § 1226(c)(1)(D).
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14 **II. Petitioner’s Mandatory Detention Pursuant To 8 U.S.C. § 1225**
15 **Does Not Violate Due Process.**

16 As explained above, arriving aliens detained under § 1225(b)(1)(B)(ii), like
17 Lt. Elikaei, are required to be detained for consideration of their application for
18 asylum. Aliens detained under these provisions may be temporarily paroled at the
19 discretion of the Attorney General under § 1182(d)(5)(A), and “[t]hat express
20 exception to detention implies that there are no other circumstances under which
21 aliens detained under § 1225(b) may be released.” *Jennings*, 583 U.S. at 300. Thus,
22 Section 1225(b) “mandate[s] detention of aliens throughout the completion of
23 applicable proceedings and not just until the moment those proceedings begin.” *Id.*
24 at 302.
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1 This conclusion conforms with the long-running understanding that the due
2 process rights of arriving aliens are limited. *See Shaughnessy v. United States ex rel.*
3 *Mezei*, 345 U.S. 206, 212 (1953) (“Whatever the procedure authorized by Congress
4 is, it is due process as far as an alien denied entry is concerned”). The Supreme Court
5 reaffirmed this in *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103
6 (2020), where it held that “an alien at the threshold of initial entry” has no procedural
7 due process rights “other than those afforded by statute.” 591 U.S. at 107.
8 Ultimately, aliens who have never effected an entry do not have a constitutional right
9 to freedom from detention into the country. *Barrera-Echavarria v. Rison*, 44 F.3d
10 1441, 1449 (9th Cir. 1995) (“While excludable aliens might, therefore, enjoy some
11 constitutional protections, we find that applicable Supreme Court precedent squarely
12 precludes a conclusion that they have a constitutional right to be free from detention,
13 even for an extended time.”); *see Demore v. Kim*, 538 U.S. 510, 547 (2003) (noting
14 Supreme Court law has “accorded [legal permanent residents] greater protections
15 than other aliens under the Due Process Clause.”).

21 The Ninth Circuit has continued to apply this principal to arriving aliens
22 placed into removal proceedings under 8 U.S.C. § 1225(b). *See Mendoza-Linares v.*
23 *Garland*, 51 F.4th 1146, 1167 (9th Cir. 2022) (“any rights [a petitioner] may have in
24 regard to removal or admission are purely statutory in nature and are not derived
25 from, or protected by, the Constitution’s Due Process Clause.”); *see id.* at 1164
26 (quoting *Thuraissigiam*, 591 U.S. at 139) (noting “an arriving alien ‘has no
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1 constitutional rights regarding his application,’ [and] ‘[w]hatever the procedure
2 authorized by Congress is, it is due process as far as an alien denied entry is
3 concerned’’); *see also Guerrier v. Garland*, 18 F.4th 304, 310 (9th Cir. 2021) (“[I]n
4 the expedited removal context, a petitioner’s due process rights are coextensive with
5 the statutory rights Congress provides.”); *Rauda v. Jennings*, 8 F.4th 1050, 1058 (9th
6 Cir. 2021) (“Congress has already balanced the amount of due process available to
7 petitioners with the executive’s prerogative to remove individuals, and we decline
8 to expand judicial review beyond the parameters set by Congress.”).

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12 Other Circuits also agree that due process rights are limited to what is
13 provided by statute, often citing *Thuraissigiam* as support for their holdings that
14 arriving aliens detained under § 1225(b)(1) do not have a due process beyond what
15 is afforded by statute *See Tazu v. Att’y Gen. U.S.*, 975 F.3d 292, 300 (3d Cir. 2020)
16 (“Tazu’s constitutional right to habeas likely guarantees him no more than the relief
17 he hopes to avoid—release into ‘the cabin of a plane bound for [Bangladesh].”
18 (quoting *Thuraissigiam*, 591 U.S. at 119)); *United States v. Guzman*, 998 F.3d 562,
19 569 (4th Cir. 2021) (“On that issue and with the support of *Thuraissigiam*, we hold
20 that the Due Process Clause did not entitle Guzman to counsel when apprehended at
21 the border and promptly removed.”); *Martinez v. LaRose*, 980 F.3d 551, 552 (6th
22 Cir. 2020) (Thapar, J., concurring) (“When an alien attempts to cross our border
23 illegally, the Due Process Clause does not require the government to release him into
24 the United States. Instead, the government may detain him while it arranges for his
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1 return home.”).

2 And several district courts have also held that arriving aliens detained under
3 8 U.S.C. § 1225(b)(1) do not have a due process right to release or a bond hearing
4 after being detained for a certain period of time. *See Poonjani v. Shanahan*, 319 F.
5 Supp. 3d 644, 650 (S.D.N.Y. 2018); *Gonzalez Aguilar v. Wolf*, 448 F. Supp. 3d 1202,
6 1212 (D.N.M. 2020); *Rodriguez Figueroa v. Garland*, 535 F. Supp. 3d 122, 126-27
7 (W.D.N.Y. 2021); *Gonzales Garcia v. Rosen*, 513 F. Supp. 3d 329, 336 (W.D.N.Y.
8 2021); *St. Charles v. Barr*, 514 F. Supp. 3d 570, 578-79 (W.D.N.Y. 2021); *Petgrave*
9 *v. Aleman*, 529 F. Supp. 3d 665, 667 (S.D. Tex. 2021); *see also Doe v. Andrews*, No.
10 1:25-CV-00333-JLT-HBK (HC), 2025 WL 3280777, *report and recommendation*,
11 at * (E.D. Cal. Nov. 25, 2025) (“[P]ursuant to *Thuraissigiam* and preceding Supreme
12 Court precedent, Lt. Elikaei’s rights as an arriving alien apprehended shortly after
13 his unlawful entry into this country and now held under mandatory detention
14 pursuant to § 1225(b)(1)(B)(ii) is limited to those rights authorized by statute, and
15 as such, he has no separate due process right to a bond hearing.”).

16 Lt. Elikaei, despite his assertions that there is no likelihood of removal in the
17 reasonably foreseeable future, *see* Pet. ¶ 26, is not being held indefinitely. Section
18 1225(b)(1)(B)(ii) specifically contemplates that an alien “shall be detained for
19 further consideration of the application for asylum.” Thus, Lt. Elikaei’s removal is
20 reasonably foreseeable at the conclusion of removal proceedings. *See Prieto-Romero*
21 *v. Clark*, 534 F.3d 1053, 1063 (9th Cir. 2008) (“[T]he ‘basic purpose’ of immigration

1 detention is ‘assuring the alien’s presence at removal and . . . this purpose was not
2 served by the continued detention of aliens whose removal was not ‘reasonably
3 foreseeable.’”). Lt. Elikaei, in support of his assertions, cites to two cases to argue
4 his removal is not reasonably foreseeable: *Zadvydas v. Davis*, 533 U.S. 678 (2001);
5 *Kydyrali v. Wolf*, 499 F. Supp. 3d 768 (S.D. Cal. 2020). However, both cases do not
6 aid Lt. Elikaei’s case.
7

8
9 First, *Kydyrali*, which granted habeas after adopting a six-factor balancing
10 test, concluded “that an unreasonably prolonged detention under 8 U.S.C. § 1225(b)
11 without an individualized bond hearing violates due process.” 499 F. Supp. 3d 768,
12 772-73 (S.D. Cal 2020); see also *Banda v. McAleenan*, 385 F. Supp. 3d 1099 (W.D.
13 Wash. 2019). Notably, *Kydyrali* read the Supreme Court’s decision in *Jennings* to
14 hold “only that detained aliens are not statutorily entitled to periodic bond hearings.”
15 499 F. Supp. 3d at 770; *but see Thuraissigiam*, 591 U.S. at 107; *see e.g., Jennings*,
16 583 U.S. at 302 (“In sum, §§ 1225(b)(1) and (b)(2) mandate detention of aliens
17 throughout the completion of applicable proceedings and not just until the moment
18 those proceedings begin.”). Notwithstanding *Kydyrali*’s narrow reading of the
19 Supreme Court’s holding in *Jennings*, *Kydyrali* does not square with the Supreme
20 Court’s holding in *Thuraissigiam* or *Mendoza-Linares*. Instead, the holding of
21 *Kydyrali* stretches Due Process beyond what is afforded individuals subject to
22 mandatory detention. Consequently, *Kydyrali*, and its adoption of the *Banda* six-
23 factor test, is unavailing as it is incongruous with Supreme Court precedent.
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1 Second, Lt. Elikaei points to *Zadvydas* as further unavailing justification as to
2 why his detention violates due process. But as pointed out in *Zadvydas*, IRGC Lt.
3 Elikaei has no due process rights to violate: *Zadvydas* was clear that the rule in *Mezei*
4 still applies to those “treated, for constitutional purposes, as if stopped at the border.”
5 *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (distinguishing *Mezei*, 345 U.S. 206 at
6 213)). Here, Lt. Elikaei was stopped at the border. Decl. ¶ 10. This makes “all the
7 difference.” *Zadvydas*, 533 U.S. at 693. Further, the Supreme Court has explicitly
8 rejected a finding that § 1225(b) contemplates any such reasonableness period
9 presented in *Zadvydas*. See *Jennings*, 583 U.S. at 283 (“Nothing in the text of §
10 1225(b)(1) or §1225(b)(2) hints that those provisions have an implicit 6-month time
11 limit on the length of detention.”). The Court should reject the proposition that
12 officers from Tier I terrorist organizations acquire a due process right to release into
13 the country by attempting to enter the U.S. illegally.
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18 Additionally, Lt. Elikaei’s § 1225(b)(1)(B)(ii) detention is not indefinite. It
19 lasts only so long as his asylum application remains under consideration. 8 U.S.C.
20 § 1225(b)(1)(B)(ii). Lt. Elikaei thus foreseeably remains capable of being
21 removed—even if it has not yet finally been determined that he should be removed
22 (or, more likely, to where he should be removed)—and so the government retains an
23 interest in assuring presence at removal. See *Prieto-Romero*, 534 F.3d at 1065; see
24 also *Gonzalez Aguilar v. Wolf*, 448 F. Supp. 3d 1202, 1211 (D.N.M. 2020) (denying
25 the habeas petition of an alien detained pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii)
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1 because “[p]etitioner’s detention will end either when the government grants her
2 asylum or when it removes her, and Petitioner identifies no Tenth Circuit or Supreme
3 Court case holding that such detention violates the Due Process Clause.” (citing
4 *Mwangi v. Terry*, 465 F. App’x 784, 787 (10th Cir. 2012)). Indeed, an immigration
5 judge has already denied Lt. Elikaei’s requested relief. Decl. ¶¶ 18–19. Lt. Elikaei’s
6 assertions that “the government has failed to effectuate” his removal within a
7 reasonable time ignores the fact that his own requests for further review of that
8 removal order is the reason why he has not been removed. Decl. ¶ 23. Throughout
9 the entirety of his detention, the EOIR record reflects that only 6 days of delay are
10 attributable to DHS. Decl. ¶ 21. When IRGC Lt. Elikaei is finally ordered removed
11 and when the removal period begins under § 1231, his § 1225(b)(1)(B)(ii) detention
12 will end and he will be detained under § 1231.

17 Given the above, Lt. Elikaei’s continued detention continues to “serve its
18 purported immigration purpose.” *See Demore v. Kim*, 538 U.S. 510, 527–28 (2003).
19 And any speculative future delay inherent to the BIA and petition for review process,
20 Mot. ¶ 41, is a claim unripe for suit because it does not discuss a current, unlawful
21 detention. *See Flaxman v. Ferguson*, 151 F.4th 1178, 1184 (9th Cir. 2025) (holding
22 a claim is unripe if it rests upon “contingent future events that may not occur as
23 anticipated, or indeed may not occur at all.”).

26 **III. Petitioner Has No Right To A Bond Hearing.**

27 Because IRGC Lt. Elikaei has no substantive due process right to release into
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1 the country, he is not entitled to procedural due process *in vacuo*. Section 1225 also
2 does not afford Lt. Elikaei the right to a bond hearing by this Court or before an
3 immigration judge. *See Jennings*, 583 U.S. at 300 (holding that because an individual
4 detained under § 1225(b) may be temporarily paroled under 8 U.S.C.
5 § 1182(d)(5)(A), it is implice[d] that there are no other circumstances under which
6 aliens detained under § 1225(b) may be released.”); *cf.* 8 U.S.C. § 1226(a) (“the
7 Attorney General may release the alien on bond . . . or conditional parole”). Because
8 Lt. Elikaei is held in mandatory detention pursuant to 8 U.S.C. § 1225(b) pending
9 further removal proceedings, he is not entitled to a bond hearing by statute. 8 U.S.C.
10 § 1225(b) “mandate[s] detention of applicants for admission until certain
11 proceedings have concluded.” *Jennings*, 583 U.S. at 297. Neither provision
12 “imposes any limit on the length of detention” or “says anything whatsoever about
13 bond hearings.” *Id.* The Ninth Circuit has held, by extending the logic of *Jennings*,
14 that individuals in mandatory detention prior to removal are not statutorily entitled
15 to a bond hearing. *Avilez v. Garland*, 69 F.4th 525, 536 (9th Cir. 2023).

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21 *Jennings* cannot be overlooked when determining whether Lt. Elikaei has a
22 right to a bond hearing. In *Jennings*, the Supreme Court expressly rejected the notion
23 that individuals detained under Section 1225(b)(1) and (b)(2) are due a bond hearing
24 after a presumptive period of time. 583 U.S. at 298 (“Nothing in the text of §
25 1225(b)(1) or § 1225(b)(2) even hints that those provisions restrict detention after
26 six months”). To the extent this Court believes that *Jennings* does not resolve Lt.
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1 Elikaei’s due process arguments, which Respondents contend it does, several district
2 courts have rejected the notion that due process rights accrue in mandatory detention
3 after a certain time frame. *See Petgrave*, 529 F. Supp. 3d at 679 (rejecting to apply
4 a test such as in *Banda* because “whatever procedure Congress has authorized is
5 sufficient due process.”); *Ibarra-Perez v. Howard*, 468 F. Supp. 3d 1156, 1176 (D.
6 Ariz. 2020) (denying a bond hearing to an alien detained under Section 1225(b)
7 because “such detention is constitutionally permissible while an asylum/removal
8 proceeding is pending.”); *Keo v. Warden of the Mesa Verde Ice Processing Ctr.*, No.
9 1:24-CV-00919-HBK (HC), 2025 WL 1029392, *6 (E.D. Cal. Apr. 7, 2025)
10 (rejecting to “apply any ‘multi-part, judge-made ‘reasonableness’ balancing test’
11 because the mandatory detention “‘ha[s] a definite termination point’ – deporting or
12 releasing the alien”) (internal citations omitted) *Doe*, 2025 WL 3280777, *report and*
13 *recommendation*, at *11 (“Petitioner does not cite, nor does the Court discern,
14 binding case law from the Supreme Court or the Ninth Circuit outlining a specific
15 balancing test that must be used to determine when or if detention under § 1225(b)(1)
16 without a bond hearing violates due process.”).

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22 Even if this Court engages in an analysis of whether Lt. Elikaei’s confinement
23 offends the due process rights that he simply does not have, he has not established
24 that *his* detention warrants judicial intervention. As a threshold matter, while IRGC
25 Lt. Elikaei argues in favor of the application of a test from *Banda*, the *Banda* test is
26 deficient in this case because, *inter alia*, it fails to take into account the public’s
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1 obvious interest in keeping those from terrorism-related backgrounds detained and
2 then removed, and also fails to account Congress’s emphatic attempts to ensure that
3 foreign nationals involved in terrorism-related activities are not permitted to
4 infiltrate the country. *See* 8 U.S.C. §§ 1182(a)(3)(B), 1225(b), 1226(c)(1)(D),
5 1231(a)(2)(A).
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8 Even if *Banda* fully considered the above, factors that *Banda* does consider
9 (the length of detention, conditions of detention, delays in removal, and the
10 likelihood of final removal) do not favor Lt. Elikaei here. 385 F. Supp. 3d at 1106.
11 “[T]he length of detention . . . is the most important factor[.]” *See Banda*, 385 F.
12 Supp. 3d at 1118. A multitude of cases, in this district and elsewhere and including
13 the cases Lt. Elikaei cites to, have held much longer periods than 11 months offend
14 due process as there is no standard amount of time to point to when detention
15 becomes “prolonged”. *See, e.g., Kydyrali*, 499 F. Supp. 3d at 772-73 (finding 17
16 months detention violated due process); *Banda*, 385 F. Supp. 3d at 1106 (18 months
17 detention violated due process); *Arechiga v. Archambeault*, No.
18 223CV00600CDSVCF, 2023 WL 5207589 (D. Nev. Aug. 11, 2023) (43 months
19 detention violated due process); *Leke v. Holt*, 521 F. Supp. 3d 597, 605 (E.D. Va.
20 2021) (24 months detention violated due process); *Gonzalez v. Bonnar*, No. 18-cv-
21 5321-JSC, 2019 WL 330906, at *3–4 (N.D. Cal. Jan. 26, 2019) (13 months detention
22 violated due process); *Muse v. Sessions*, No. 18-CV-0054 (PJS/LIB), 2018 WL
23 4466052, at *4 (D. Minn. Sept. 18, 2018) (“[a]s detention continues past a year,
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1 courts become extremely wary of permitting continued custody absent a bond
2 hearing.”). Lt. Elikaei also equates his civil immigration detention to penal
3 detention,¹ but the Supreme Court has long held that the two are distinct. *Wong Wing*
4 *v. United States*, 163 U.S. 228, 235 (1896) (“[d]etention is... not imprisonment in a
5 legal sense.”). His argument for bond because “[a]ll delays in this case are
6 attributable to the government” does not address that agency action is entitled to a
7 presumption of regularity, *see, e.g., United States v. Chem. Found.*, 272 U.S. 1, 14-
8 15 (1926), and he presents no evidence that the delays were outside the due course
9 of immigration proceedings. And further, given that Lt. Elikaei was an officer in the
10 IRGC, the likelihood that he will obtain relief that allows him to stay in the United
11 States is doubtful at best. Finally, there is no serious contention that that ICE would
12 drag its feet on executing his removal order, given his background.² These factors,
13 which are neutral for Lt. Elikaei at best, do not support immediate release or release
14 on bond often granted to petitioners after a *Banda* analysis.

20 ¹ To the extent that Petitioner raises conditions of confinement claim outside
21 of the context of a *Kydyrali* and *Banda* comparison, *see* Pet ¶ 42 (“[c]onditions of
22 confinement also raise constitutional concerns as the medical treatment available at
23 the Otay Mesa Detention Center is not adequate to address Mr. Elikaei’s health
24 conditions”), this claim does not sound in habeas. *Pinson v. Carvajal*, 69 F.4th 1059,
25 1068-69 (9th Cir. 2023); *see Mendoza-Linares v. Garland*, No. 21-cv-1169-BEN
26 (AHG), 2024 WL 3316306, at *2 n.1 (S.D. Cal. 2024) (citing *Nettles v. Grounds*,
830 F.3d 922, 933 (9th Cir. 2016)); *see also Thuraissigiam*, 591 U.S. at 119
27 (“[H]abeas is at its core a remedy for unlawful executive detention.” (internal
28 quotation omitted)).

² Even under the prior administration’s policies, his removal would have been
a top priority. <https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf>

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2 Dated: December 8, 2025

Respectfully Submitted,

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4 BRETT A. SHUMATE
5 Assistant Attorney General
6 Civil Division

7 DAVID J. BYERLEY
8 Senior Litigation Counsel

9 /s/ Jaime A. Scott
10 JAIME A. SCOTT
11 DC Bar # 90027182
12 Trial Attorney
13 U.S. Department of Justice
14 Civil Division
15 Office of Immigration Litigation
16 P.O. Box 868, Ben Franklin Station
17 Washington, DC 20044
18 Tel: (202) 305-3620
19 Email: Jaime.A.Scott@usdoj.gov

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Attorneys for Respondents

CERTIFICATE OF SERVICE

I hereby certify that on December 8, 2025, I filed this document with the Clerk of the Court through the CM/ECF system, which will provide electronic notice and an electronic link to this document to all counsel of record.

Respectfully submitted,
/s/ Jaime A. Scott
JAIME A. SCOTT
Trial Attorney
United States Department of Justice
Civil Division
Office of Immigration Litigation
Attorney for Respondents

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