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

10 NAHAPETYAN KHACHO¹,
11 Petitioner,
12 v.
13 WARDEN OF CALIFORNIA CITY
DETENTION FACILITY
14 Respondents.
15

CASE NO. 1:25-CV-01659-DJC-CSK

**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**

16 **I. INTRODUCTION**

17 Respondent moves to dismiss the Petition for Writ of Habeas Corpus filed by Nahapetyan
18 Khacho on November 26, 2025, on the grounds that Petitioner, as an arriving noncitizen who is present
19 in the United States without admission or parole, is mandatorily detained during removal proceedings, as
20 provided by 8 U.S.C. § 1225(b). As such, Petitioner is ineligible for the bond hearing he requests,
21 despite the length of his detention. Respondents therefore request that the Court dismiss the Petition or,
22 in the alternative, deny the Petition for the reasons stated herein.

23 **II. BACKGROUND**

24 Petitioner is a native and citizen of Armenia who applied for admission to the United States at
25 the San Ysidro, California, Port of Entry on October 27, 2024, without valid documents to enter the
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27 ¹ Although the Petitioner stated his name as “Nahapetyan Khacho” in the caption of his habeas
28 corpus petition, immigration documents identify “Khacho” as his given name and “Nahapetyan” as his
surname. For consistency, this brief will refer to Petitioner as “Nahapetyan Khacho” where appropriate.

1 United States. Decl. of Deportation Officer Patrick Cruz (“Cruz Decl.”) ¶ 6; Cruz Decl. Ex. 1 at 2. The
2 U.S. Department of Homeland Security (“DHS”) initiated removal proceedings against Petitioner,
3 charging him with inadmissibility pursuant to Section 212(a)(7)(A)(i)(I) of the Immigration and
4 Nationality Act (“INA”), because he did not possess or present a “valid unexpired immigrant visa,
5 reentry permit, border crossing identification card, or other valid entry document.” *See* 8 U.S.C. §
6 1182(a)(7)(A)(i)(I); Cruz Decl. ¶ 6; Cruz Decl. Ex. 1. Petitioner was initially placed into expedited
7 removal proceedings on October 28, 2024. Cruz Decl. ¶ 7; Cruz Decl. Ex. 1. Petitioner was detained on
8 October 27, 2024, the date he entered the United States, pursuant to 8 U.S.C. § 1225(b)(1). Cruz Decl. ¶
9 6; Cruz. Decl. Ex. 1.

10 After entering the United States, Petitioner claimed a fear of returning to his native country of
11 Armenia and was interviewed by an asylum officer who made a positive credible fear determination.
12 Cruz Decl. ¶¶ 7-8; Cruz Decl. Ex. 1-2. On December 6, 2024, DHS issued a Notice to Appear to
13 Petitioner, which placed him into regular removal proceedings. Cruz Decl. ¶ 9; Cruz Decl. Ex. 3.

14 Petitioner’s immigration proceedings involved multiple continuances to afford Petitioner counsel
15 and time to complete certain filings. *See generally* Decl. of Paralegal Specialist Jessica Harrold
16 (“Harrold Decl.”). On January 15, 2025, Petitioner’s appeared for an initial master calendar hearing
17 without counsel before an immigration judge and the hearing adjourned until February 25, 2025, to
18 allow Petitioner time to find counsel. Harrold Dec. ¶ 3. On February 25, 2025, Petitioner’s hearing
19 adjourned once more until March 24, 2025, to give Petitioner time to file an application for asylum and
20 withholding of removal (Form I-589). Harrold Dec. ¶ 4. On March 24, 2025, Petitioner appeared with
21 counsel and received another adjournment until May 6, 2025, to give Petitioner more time to file his
22 asylum application. Harrold Dec. ¶ 5. On May 6, 2025, Petitioner with counsel appeared before an
23 immigration judge once more and received an adjournment until June 24, 2025, to give Petitioner more
24 time to file original supplemental documents. Harrold Dec. ¶ 6. On June 24, 2025, Petitioner appeared
25 before an immigration judge again, this time with new counsel, and received another adjournment until
26 July 15, 2025, to file original supplemental documents. Harrold Dec. ¶ 7. On July 15, 2025, Petitioner
27 and his new counsel received another adjournment to allow Petitioner to file original supplemental
28 documents. Harrold Dec. ¶ 8. Petitioner currently has his individual hearing scheduled for December 24,

1 2025. Harrold Dec. ¶ 9. To date, Petitioner has been in civil immigration detention for about fourteen
2 months and has been in civil immigration proceeding for about twelve of those months. He is currently
3 in custody at the California City Detention Center located in California City, California. Cruz Decl. ¶
4 10; ECF No. 1 at 1.

5 On November 26, 2025, Petitioner filed the instant petition for writ of habeas corpus with this
6 Court, contending that this detention since May 2025 without a bond hearing to assess his danger to the
7 community or flight risk violates the Due Process Clause of the Fifth Amendment. Petitioner seeks the
8 following relief: (1) an order requiring the immigration judge to assume jurisdiction to order a bond
9 hearing, (2) a bond hearing to determine if his detention is justified because the government has not
10 established by clear and convincing evidence that Petitioner presents a risk of flight or danger and order
11 his release taking into account his ability to pay, or (2) in the alternative, order his release. (ECF No. 1 at
12 7.)

13 **III. LEGAL STANDARD**

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

15 Petitioner's sole ground for relief, that his "prolonged detention without bond hearing" violates
16 the Due Process Clause of the Fifth Amendment, is foreclosed by statute and inconsistent with Supreme
17 Court precedent. As an arriving noncitizen without a valid entry document, Petitioner is subject to
18 mandatory detention. If a noncitizen "indicates an intention to apply for asylum . . . or a fear of
19 persecution," immigration officers will refer the alien for a credible fear interview, as happened here.
20 See 8 U.S.C. § 1225(b)(1)(A)(ii). "Any alien subject to the procedures under this clause shall be
21 detained pending a final determination of credible fear of persecution, and if found not to have such a
22 fear, until removed." 8 U.S.C. § 1225(b)(1)(B)(iii)(IV). Here, an asylum officer reached a positive
23 credible fear determination. Cruz Decl. ¶ 8. Yet, an alien "with a credible fear of persecution . . . *shall be*
24 *detained* for further consideration of the application for asylum." 8 U.S.C. § 1225(b)(1)(B)(ii) (emphasis
25 added). This mandatory detention may not be reconsidered by an Immigration Judge based on any
26 alleged lack of danger or flight risk posed by the alien, as the relevant regulation provides that an
27 Immigration Judge may not redetermine the conditions of custody imposed by DHS on "[a]rriving aliens
28 in removal proceedings" such as Petitioner. 8 C.F.R. § 1003.19(h)(2)(i)(B); see also *Matter of Jonathan*

1 *Javier Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) (“[U]nder a plain language reading of section
2 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), Immigration Judges lack authority to hear bond
3 requests or to grant bond to aliens . . . who are present in the United States without admission.”).

4 Petitioner’s detained status, despite its length, is therefore mandated by statute. “As with any
5 question of statutory interpretation, [the] analysis begins with the plain language of the statute.”

6 *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009) (citing *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004)).

7 The INA defines an applicant for admission as an “alien present in the United States who has not been
8 admitted or who arrives in the United States (whether or not at a designated port of arrival ...) . . .” 8

9 U.S.C. § 1225(a)(1). The Supreme Court has explained that 8 U.S.C. § 1225(b)(1) “unequivocally
10 mandate[s]” detention. *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018). Indeed, *Jennings* highlighted

11 the express requirement of the statute, acknowledging that “[u]nlike the word ‘may,’ which implies
12 discretion, the word ‘shall’ usually connotes a requirement.” *Id.* (quoting *Kingdomware Technologies,*

13 *Inc. v. United States*, 579 U.S. 162, 171 (2016)). To that end, “[r]ead most naturally, § 1225(b)(1) . . .
14 mandate[s] detention of applicants for admission until certain proceedings have concluded,” which is

15 when “immigration officers have finished ‘consider[ing]’ the asylum application.” *Jennings*, 583 U.S. at
16 283, 287.

17 Applicants for admission, including those referred for removal proceedings under 8 U.S.C.
18 § 1229a after establishing a credible fear of prosecution or torture, are subject to detention under 8
19 U.S.C. § 1225(b)(1) and are not owed a bond hearing before an Immigration Judge. 8 U.S.C. §
20 1225(b)(1)(iii)(IV) (“Any alien subject to the procedures under this clause shall be detained pending a
21 final determination of credible fear of persecution and, if found not to have such a fear, until removed.”).

22 In *Demore v. Kim*, 538 U.S. 510 (2003), the Supreme Court rejected a facial challenge to a
23 noncitizen’s mandatory civil detention pending removal proceedings under a different statute, 8 U.S.C. §
24 1226(c). In *Demore*, the Supreme Court determined that prolonged mandatory detention during civil
25 removal proceedings is “constitutionally permissible.” 538 U.S. at 530–31. In *Demore*, while the
26 Supreme Court recognized that mandatory detention normally lasts for a “limited period” of time, the
27 Court held that mandatory detention could run for a much longer period while still being constitutional,
28 for instance, where, as in this case, the noncitizen took actions to continue and lengthen his removal

1 proceedings. *Id.* at 531. By recognizing “mandatory” detention pending removal proceedings properly
2 may be prolonged, the Supreme Court flatly rejected a rule of compelled detention hearing within a
3 fixed time. *Id.* As in *Demore*, both constitutionally and as a matter of statute, Petitioner’s continued
4 mandatory civil detention is warranted.

5 Following *Jennings*, this Court has repeatedly refused to identify a specific time period after
6 which a noncitizen’s detention will be considered presumptively violative of due process. *See, e.g.*,
7 *Navarrete-Leiva v. U.S. Attorney General, et al.*, No. 1:24-cv-00938-SKO, 2024 WL 5111780 (E.D.
8 Cal. Dec. 13, 2024) (rejecting petitioner’s claim that the Constitution requires a bond hearing for
9 continued detention during removal proceedings beyond six months); *Abdul-Samed v. Warden of the*
10 *Golden State Annex Detention Facility*, No. 1:25-cv-00098, 2025 WL 2099343, at *5 (E.D. Cal. July 25,
11 2025) (declining to adopt a presumption of reasonableness or unreasonableness as to any period of
12 detention). For example, in *Keo v. Warden of the Mesa Verde ICE Processing Center*, this Court
13 assessed a purported due process violation by a petitioner held under mandatory detention pursuant to a
14 different section of the INA, 8 U.S.C. § 1226(c), who had been detained for approximately 22 months.
15 No. 1:24-CV-00919-HBK (HC), 2025 WL 1029392, at *4 (E.D. Cal. Apr. 7, 2025), *appeal dismissed*
16 *sub nom. Keo v. Warden*, No. 25-3546, 2025 WL 2528945 (9th Cir. June 27, 2025). The Court rejected
17 that argument, concluding that petitioner’s continued detention without a bond hearing was
18 constitutional pursuant to the mandatory detention statute, so long as his ongoing removal proceedings
19 contemplated a “definite termination point” at the conclusion of those proceedings and his detention was
20 not indefinite. *Id.* at *6–8 (internal quotations omitted) (citing *Jennings*, 583 U.S. 304; *Demore*, 538
21 U.S. at 527, 538) (“ . . . Petitioner’s detention is not indefinite; there is a definite termination point at the
22 conclusion of his ongoing legal challenges. There is no indication that the ongoing removal proceedings
23 do not serve their intended purpose or are intended to incarcerate him for other reasons. Therefore, the
24 Court finds no due process violation in Petitioner’s continued detention under § 1226(c) without a bond
25 hearing”) While the basis for mandatory detention differs here, the same reasoning applies with
26 equal force.

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1 **B. Petitioner’s Continued Detention Does Not Violate Due Process**

2 The Fifth Amendment entitles noncitizens to due process of law, but the Ninth Circuit
3 “interpret[s] the Due Process Clause consistent with longstanding precedent recognizing that the process
4 due aliens must account for the government’s countervailing interests in immigration enforcement—
5 considerations that do not apply to U.S. citizens.” *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1205–06
6 (9th Cir. 2022). The Supreme Court has “firmly and repeatedly endorsed the proposition that Congress
7 may make rules as to aliens that would be unacceptable if applied to citizens.” *Demore*, 538 U.S. at 522.
8 This is true because “any policy toward aliens is vitally and intricately interwoven with
9 contemporaneous policies in regard to the conduct of foreign relations, the war power, and the
10 maintenance of a republican form of government, which are core sovereign powers.” *Id.* The Supreme
11 Court has “recognized detention during deportation proceedings as a constitutionally valid aspect of the
12 deportation process.” *Id.* at 523.

13 Here Petitioner’s detention not indefinite and Petitioner has received due process in his asylum
14 proceedings. Unlike noncitizens detained under 8 U.S.C. § 1231(a)(6), where their detention could be
15 “indefinite” and “potentially permanent,” Petitioner’s detention under Section 1225(b) has a definite
16 termination point based on his asylum proceedings. *Demore*, 538 U.S. at 528–29 (2003) (citing
17 *Zadvydas v. Davis*, 533 U.S. 678, 697 (2001)); *Navarrete-Leiva*, 2024 WL 5111780, at *4. In this
18 matter, Petitioner’s detention period has been prolonged in part due to continuances and adjournments
19 granted to give Petitioner more time for his asylum application. Petitioner sought asylum received
20 continuances to obtain counsel, file the asylum petition, obtain *new* counsel, and file supplemental
21 materials. Harrold Decl. ¶¶ 3–9. The Supreme Court found this fact noteworthy in *Denmore*:
22 “Respondent was detained for somewhat longer than the average ... but respondent himself has
23 requested a continuance of his removal hearing.” *Denmore*, 538 U.S. at 530–31; *see also Navarrete-*
24 *Leiva*, 2024 WL 5111780, at *4. Petitioner currently has his individual hearing scheduled on December
25 24, 2025. Harrold Decl. ¶ 9 The Petitioner has received due process in the adjudication of his asylum
26 claim and will continue to receive it.

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IV. 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: December 16, 2025

ERIC GRANT
United States Attorney

By: /s/ CALVIN LEE
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