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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

BILAL ALPSEN,

Petitioner,

v.

MINGA WOFFORD, *et al.*,

Respondents.

CASE NO. 1:25-cv-01715-KES-HBK

OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS AND MOTION FOR TEMPORARY RESTRAINING ORDER

Pursuant to the Court's December 3, 2025 order (ECF No. 4), Respondents hereby submit this opposition to Petitioner's petition for a writ of *habeas corpus* (ECF No. 1) and motion for a temporary restraining order (ECF No. 2). Petitioner is mandatorily detained pursuant to 8 U.S.C. § 1225(b). Respondents therefore respectfully request that the Court deny the petition and motion.

FACTUAL BACKGROUND

Petitioner is a native and citizen of Turkey, who entered the United States without inspection at or near El Paso, Texas, on August 21, 2022. Decl. of Deportation Officer Christopher Jerome ("Jerome Decl.") ¶ 6. The U.S. Department of Homeland Security ("DHS") released Petitioner from custody on an Order of Release on Recognizance ("OREC") on August 30, 2022. *Id.* ¶ 7.

On October 10, 2025, DHS cancelled Petitioner's OREC and took Petitioner into custody to process him for expedited removal pursuant to 8 U.S.C. § 1225(b)(1). *Id.* ¶ 8. Petitioner expressed a fear

of returning to Turkey, thus DHS referred him to U.S. Citizenship and Immigration Services ("USCIS") for a credible fear interview. *Id.* ¶ 9. On October 23, USCIS found that Petitioner had a credible fear of returning to Turkey. *Id.* ¶ 10. On November 13, USCIS placed Petitioner in detained removal proceedings, charging him with removability pursuant to 8 U.S.C. § § 1182(a)(7)(A)(i)(I). *Id.* ¶ 11.

On November 26, 2025, Petitioner appeared before an immigration judge, represented by counsel. *Id.* ¶ 12. Petitioner requested and was granted a continuance for attorney preparation time. *Id.* Petitioner's next hearing date before the immigration judge is January 13, 2026. *Id.* ¶ 13. Petitioner remains detained pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii). *Id.* ¶ 14.

On December 2, 2025, Petitioner filed a petition for a writ of *habeas corpus* with this Court, seeking immediate release from immigration, and barring re-detention unless Respondents prove by clear and convincing evidence that he is a danger or a flight risk. (ECF No. 1 at 5.) In the alternative, Petitioner seeks release from detention, unless he is granted a bond hearing before a neutral arbiter, at which the government would bear the burden of proving danger or flight risk by clear and convincing evidence. (*Id.*) Also on December 2, Petitioner filed a motion for a temporary restraining order, in which he seeks the same relief as in his petition. (*See* ECF No. 2 at 8-9.)

LEGAL ARGUMENT

A. Petitioner's Detention Is Mandated by Statute

Noncitizens arriving in the United States without valid entry documents are subject to mandatory detention. If a noncitizen "indicates an intention to apply for asylum . . . or a fear of persecution," immigration officers 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). This mandatory detention may not be reconsidered by an immigration judge based on an 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." 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 ... 8 U.S.C. § 1225(b)(2)(A), Immigration Judges lack authority to hear bond requests ... to aliens . . . who are present in the United States without admission.").

Petitioner's status is therefore mandated by statute. 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) ("If the officer determines at the time of the interview that an alien has a credible fear of persecution ..., the alien shall be detained for further consideration of the application for asylum."); 8 U.S.C. § 1225(b)(1)(B)(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.")

"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.

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. 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 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.*

B. Petitioner's 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." *Id.* at 523 (internal quotation marks and citation omitted).

Moreover, 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.

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").

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Thus, the 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). Such tests were rejected 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 the 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, if the Court were to apply a multi-factor balancing test to Petitioner's detention without a bond hearing, the most common test would favor Respondents. 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 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.

a. The Private Interest

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.

Under the first *Mathews* factor, weight is also given to the process Petitioner receives during his detention and to Petitioner's own delays prolonging such 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.*; *see also Aguayo v. Martinez*, 2020 WL 2395638, at *3 (D. Colo. May 12, 2020). Here, Petitioner has also requested such a continuance, Jerome Decl. ¶ 12, and there is no indication that Respondents have caused any delay in Petitioner's removal proceedings. *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").

b. The Risk of 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 claim for asylum. Petitioner's next hearing is scheduling for January 13, 2026. Jerome Decl. ¶ 13. 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.

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 in detention is therefore strong. "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.").

CONCLUSION

For the reasons set forth above, Respondents respectfully request that the Court deny the petition for writ of *habeas corpus* and the corresponding motion for a temporary restraining order.

Dated: December 9, 2025

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