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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

J.O.P.G,

Petitioner,

v.

WARDEN OF THE GOLDEN STATE ANNEX DETENTION FACILITY, *et al.*,

Respondents.[1]

CASE NO. 1:25-cv-01751-KES-SKO

RESPONDENTS' OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

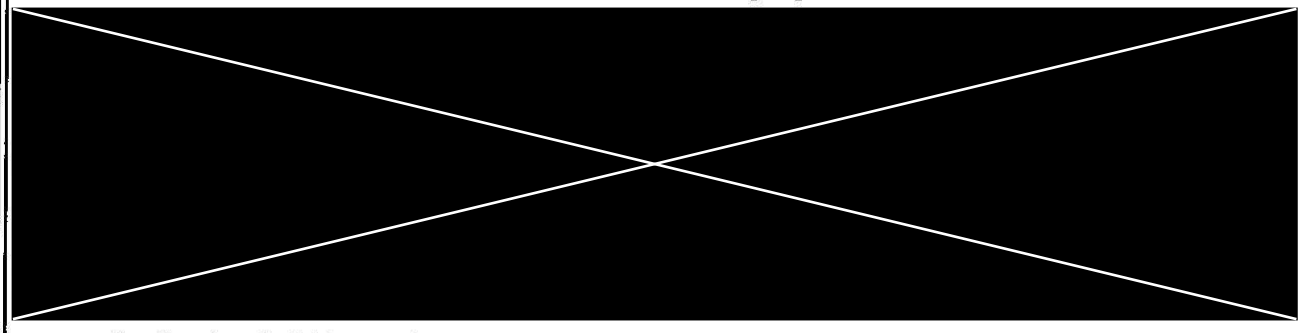
Petitioner is the subject of a November 13, 2024 removal order and is being detained under removal procedures requiring mandatory detention until he is removed. 8 U.S.C. §1225(b)(1). The Court should deny his habeas petition requesting release and a bond hearing because the Supreme Court has held that non-citizens subject to mandatory detention under 8 U.S.C. § 1225(b)(1) are not entitled to a bond hearing. *Jennings v. Rodriguez,* 583 U.S. 281, 311-12 (2018). However, if the Court decides to address Petitioner's claim that the length of his detention period violates due process, the Court should deny the habeas petition because the factors this Court considers in analyzing due process

[1] The government moves to dismiss all respondents other than the Warden of the Golden State Annex Facility. A habeas petitioner may only name the officer having custody of him as the respondent. 28 U.S.C. § 2242; *Rumsfeld v. Padilla,* 542 U.S. 426, 430 (2004); *Doe v. Garland,* 109 F.4th 1188, 1197 (9th Cir. 2024).

claims in the immigration context weigh in favor of the government. Therefore, due process does not require Petitioner's release from detention, nor the provision of a bond hearing.

II. BACKGROUND

Petitioner is a native and citizen of El Salvador who entered the United States on June 16, 2024, at the San Ysidro port-of-entry as part of the CBP One Application program. Declaration of Brandon Boyd ("Boyd Decl."), ¶ 6, Exh. 2. On June 17, 2024, he was placed into removal proceedings and DHS issued him a Notice to Appear. Boyd Decl. ¶ 7 and Exhs 1, 2. He was then released under the Alternatives to Detention ("ADT") GPS program. Exh. 2.



On October 3, 2024, Petitioner appeared for his first hearing before the Immigration Court for his removal proceedings. Boyd Decl. ¶ 10. At Petitioner's request, his case was continued for him to seek legal representation. *Id.* On October 10, 2024, Petitioner appeared for his second hearing, during which the Petitioner pled to the charges in the Notice to Appear. *Id.* at ¶ 11. The Immigration Judge sustained the charges and designated El Salvador as the country of removal. *Id.* The immigration judge then continued the matter to allow the Petitioner time to file an application for relief from removal. *Id.* On October 23, 2024, the Petitioner requested, but was denied a bond hearing because the Petitioner, as an arriving alien, was not bond eligible. *Id.* at ¶ 12.

At Petitioner's final hearing on November 13, 2024, the immigration judge heard testimony and considered evidence in support of the Petitioner's application. *Id.* at ¶ 13. The Immigration Judge denied the Petitioner's applications for relief from removal and ordered him removed to El Salvador. *Id.* at ¶ 14, Exh. 8.

On December 11, 2024, the Petitioner filed an appeal of the immigration judge's decision with the Board of Immigration Appeals ("BIA"). *Id.* at ¶ 15, Exh. 9. On April 07, 2025, the BIA issued a briefing schedule. *Id.* at ¶ 16, Exh. 10. On June 23, 2025, the BIA dismissed Petitioner's

motion on appeal and on September 18, 2025, Petitioner filed a motion to reopen at the BIA. *Id.* at ¶18, Exh. 12.

On June 20, 2025, the Petitioner filed a Petition for Review and a Motion to Stay Removal at the Ninth Circuit Court of Appeals. *Id.* at ¶ 17, Exh. 11. On October 29, 2025, the Ninth Circuit stayed the Petitioner's removal order. Exh. 11. As of the date of this filing, the Petitioner's appeal before the Ninth Circuit remains pending. *Id.*

On December 5, 2025, Petitioner filed his habeas corpus petition, challenging the length of his detention as unconstitutional in violation of the Fifth Amendment Due Process Clause and seeking release and a bond hearing. *See* ECF 1 at 16–17. The Petitioner remains detained under 8 U.S.C. § 1225(b)(1). Boyd Decl. ¶ 19.

III. DISCUSSION

A. Section 1231 Does Not Govern Petitioner's Detention Because the Ninth Circuit Issued a Stay of Removal

Petitioner is subject to a final order of removal, but he is not currently detained under 8 U.S.C. § 1231. Section 1231(a)(1)(B)(ii) provides that the statutory 90-day removal period begins on the latest of several dates, including "if the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order." Because the court of appeals has issued a stay of removal, the statutory removal period has not yet commenced, and the government is not operating within § 1231's detention framework. *See Prieto-Romero v. Clark, 534 F.3d* 1053, 1058 (9th Cir. 2008) ("We hold that the Attorney General's statutory authority to detain [petitioner], whose administrative review is complete but whose removal is stayed pending the court of appeals' resolution of his petition for review, must be grounded in § 1226(a).").

While *Prieto-Romero* held that § 1226 supplies the detention authority when a judicial stay prevents the execution of a final order, § 1226 applies only to noncitizens who have been admitted to the United States. It does not govern the detention of individuals who were never admitted. Petitioner is an arriving alien, and Congress established a distinct and mandatory detention scheme for such individuals in 8 U.S.C. § 1225(b)(1). That provision requires that applicants for admission "shall be detained" pending a decision on their removal. Accordingly, because the Ninth Circuit's

stay prevents the government from executing the removal order and Petitioner was never admitted, the government's detention authority reverts to § 1225(b), which governs here.

B. Petitioner is Subject to Mandatory Detention under 8 U.S.C. § 1225(b)

Section 1225 applies to "applicants for admission," who are defined as "alien[s] present in the United States who [have] not been admitted" or "who arrive[] in the United States." 8 U.S.C. § 1225(a)(1). Applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings*, 583 U.S. at 287.

Section 1225(b)(1) applies to arriving aliens and "certain other" aliens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Id.*; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These aliens generally are subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if the alien "indicates an intention to apply for asylum . . . or a fear of persecution," immigration officers will refer the alien for a credible fear interview. 8 U.S.C. § 1225(b)(1)(A)(ii). An alien "with a credible fear of persecution" is "detained for further consideration of the application for asylum." 8 U.S.C. § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to apply for asylum, express a fear of persecution, or is "found not to have such a fear," he is detained until removed. 8 U.S.C. §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

Section 1225(b)(2) is "broader" and "serves as a catchall provision." *Jennings*, 583 U.S. at 287. It "applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* Under § 1225(b)(2), an alien "who is an applicant for admission" shall be detained for a removal proceeding "if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A); *see Pena v. Hyde*, No. CV 25-11983-NMG, 2025 WL 2108913, at *1 (D. Mass. July 28, 2025) ("[§ 1225] authorizes the detention of any alien who 1) is 'an applicant for admission' to the country and 2) is 'not clearly and beyond doubt entitled to be admitted." (citing 8 U.S.C. § 1225(b)(2)(A)); *Matter of Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) ("[F]or aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded.'") (citing *Jennings*, 583 U.S. at 299). Still, the Department of Homeland Security ("DHS") has the sole discretionary

authority to temporarily release on parole "any alien applying for admission to the United States" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

Petitioner falls squarely within § 1225(b)(1). He was apprehended at the border in June 2024, treated as an arriving alien, and placed in § 1229a proceedings. Although DHS later paroled him into the United States, parole does not alter his statutory classification as an arriving alien. Stated differently, parole does not place the alien "within the United States." *Leng May Ma*, 357 U.S. 185, 190 (1958). Consistent with that principle, the Supreme Court has reaffirmed that "[A]n alien who 'arrives in the United States,' or 'is present' in this country but 'has not been admitted,' is treated as 'an applicant for admission.'" *Jennings*, 583 U.S. 281.

Respondents' position is therefore straightforward: as an arriving alien, Petitioner is subject to mandatory detention under § 1225(b)(1) and is ineligible for a bond hearing. Because the Petitioner appealed his removal order to the Ninth Circuit, his removal order is not final. As a result, his removal proceedings remain ongoing, and § 1225(b)(1) continues to mandate detention until those proceedings conclude.

Following Petitioner's September 2024 arrest, DHS exercised its discretion not to re-parole him. Nothing in § 1225(b)(1) authorizes a bond hearing or any other form of custody redetermination for an arriving alien detained under that provision.

But, if the Court decides to address Petitioner's due process detention claim, it should find that, under the circumstances, Petitioner's continued detention does not constitute a due process violation warranting habeas relief.

C. Neither the Supreme Court nor the Ninth Circuit Has Adopted Due Process Tests in the Context of Mandatory Detention.

The Supreme Court has explained that 8 U.S.C. § 1225(b)(1) is "quite clear" and "unequivocally mandate[s]" detention. *Jennings*, 583 U.S. at 300. The Supreme Court distinguished § 1225(b)(1) detention from the § 1231(a)(6) detention at issue in *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001), which recognized a due process right of non-citizens detained after orders of removal to receive bond hearings for more than six months, because § 1225(b)(2) requires that non-

citizens "shall" be detained until removed, unlike § 1231(a)(6), which states that non-citizens "may" be detained after the 90-day removal period.[2] *Jennings,* 583 U.S. at 300.

The Supreme Court has never utilized the multi-factor "balancing test" of *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), in addressing due process claims raised by non-citizens held in civil immigration detention, despite multiple opportunities to do so since *Mathews* was decided in 1976. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) ("[T]he Supreme Court when confronted with constitutional challenges to immigration detention has not resolved them through express application of *Mathews*.") (citations omitted); *id.* at 1214 ("In resolving similar immigration detention challenges, the Supreme Court has not relied on the *Mathews* framework.") (Bumatay, J., concurring). Nor has the Ninth Circuit embraced the *Mathews* test. *Rodriguez Diaz*, 53 F.4th at 1206. While leaving open the question of whether the *Mathews* test applies to a constitutional challenge to immigration detention, *see Rodriguez Diaz*, 53 F.4th at 1207, the Ninth Circuit has emphasized that "*Mathews* remains a flexible test that can and must account for the heightened governmental interest in the immigration detention context." *Id.* at 1206. Yet non-citizens subject to mandatory detention, who were not admitted or paroled into the country, nor physically present for at least two years on the date of inspection, as a class, lack any liberty interest in avoiding removal or to certain additional procedures. 8 U.S.C. § 1225(b). As to such non-citizens, "[w]hatever the procedure authorized by Congress . . . is due process." *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950); *accord Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 138-139 ("This rule would be meaningless if it became inoperative as soon as an arriving alien set foot on U.S. soil."); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) ("An alien seeking initial admission to the United States requests a privilege and has no constitutional rights

[2] Generally, when a non-citizen becomes subject to a final removal order, the government has 90 days in which to remove the non-citizen. 8 U.S.C. § 1231(a)(1)(A). The removal period begins on the latest of: (1) the date the order of removal becomes administratively final; (2) if the order is judicially reviewed and if a court orders a stay of removal, the date of the court's final order; or (3) if the non-citizen is detained or confined in a non-immigration process, the date the non-citizen is released from detention or confinement. *Id.* § 1231(a)(1)(B). Because Petitioner is subject to mandatory detention under § 1225(b)(1), the foregoing does not apply. However, even if it did, the 90-day removal period under §1231(a)(1) has not yet begun to run because of the Ninth Circuit's stay of removal. *Id.* §1231(a)(1)(B)(ii).

regarding his application, for the power to admit or exclude aliens is a sovereign prerogative"); *U.S. ex rel. Knauff*, 338 U.S. at 542 ("At the outset we wish to point out that an alien who seeks admission to this country may not do so under any claim of right).

Thus, illegal aliens amenable to mandatory detention cannot assert a protected property or liberty interest in additional procedures not provided by the statute, 8 U.S.C. § 1225. *See Dave v. Ashcroft*, 363 F.3d 649, 653 (7th Cir. 2004). Instead, those non-citizens, including Petitioner, have "only those rights regarding admission that Congress has provided by statute." *Thuraissigiam*, 591 U.S. at 140.

1. If the Court Decides to Address a Prolonged Detention Claim, Analysis Under the *Lopez* test or the *Mathews* Test Weighs in Respondent' Favor.

To the extent that district courts recognize a Due Process requirement regarding prolonged immigration detention under § 1225(b)(1), there is a general lack of guidance on the appropriate test or standard to apply to a challenge to prolonged detention claims.

Respondents recognize that this Court has expressed concerns that § 1225(b)'s mandatory detention provisions raise constitutional issues and has applied the *Mathews* analysis in the context of mandatory detention under § 1225(b)(1). *See, e.g., Maksim v. Warden, Golden State Annex, et al.*, No. 1:25-cv-00955-SKO (HC), 2025 WL 2879328 (E.D. Cal. Oct. 9, 2025) (finding it appropriate to apply *Mathews* test in a § 1225(b)(1) mandatory detention habeas case, where petitioner was not yet subject to a final expedited removal order, and ordering a bond hearing before an immigration judge). The Court also has applied the three-part test in *Lopez v. Garland*, 631 F. Supp. 3d 870 (E.D. Cal. 2022), which considers: (1) the total length of detention to date, (2) the likely duration of future detention, and (3) the delays in the proceedings caused by the petitioner and the government. *Lopez*, 631 F. Supp. 3d at 879 (noting that the *Mathews* factors are more suited to determining whether due process requires a second bond hearing and rejecting other multi-factor tests). *See Abdul-Samed v. Warden of Golden State Annex Det. Facility*, No. 1:25-cv-00098-SAB-HC, 2025 WL 2099343, at *6 (E.D. Cal. July 25, 2025) (finding that *Lopez* applies to mandatory detention under § 1225(b), applying test to petitioner not yet subject to final expedited removal order, and ordering a bond hearing before an immigration judge). Under either of these analyses, the factors

weigh in favor of the United States and support denial of the habeas petition and Petitioner's continued mandatory detention under § 1225(b)(1) pending the Ninth Circuit's decision.

2. **The *Mathews* Factors Weigh in Favor of the Government.**

The first *Mathews* factor considers "the private interest that will be affected by the official action" and requires weighing Petitioner's interest in being free from detention against the government's interest in avoiding the risk of Petitioner's flight to avoid removal. *See Maksim*, 2025 WL 2879328, at *4. As the Ninth Circuit has explained, "in evaluating [Petitioner's] interests under the first prong of the *Mathews* analysis, we cannot simply count his months of detention and leave it at that. We must also consider process received during this time, the further process that was available to him, and the fact that his detention was prolonged due to his decision to challenge his removal order." *Rodriguez Diaz*, 53 F.4th at 1208. This factor weighs in favor of the government.

When Petitioner filed his habeas petition on December 5, 2025, he had been detained for approximately fourteen months. However, most of this delay was caused by the Petitioner. The immigration judge ordered the Petitioner removed on November 13, 2024. Since then, the Petitioner filed an appeal with the BIA within the appropriate time. That appeal was dismissed on June 20, 2025. On the same date, the Petitioner filed an appeal with the Ninth Circuit, which stayed removal pending further order of that court. *Rodriguez Diaz*, 53 F.4th at 1208 ("We also cannot overlook that most of the period of [petitioner's] detention arose from the fact that he chose to challenge before the BIA and later this Court the IJ's denial of Immigration Relief"); *see Prieto-Romero*, 534 F.3d at 1063–65 & n.9 (holding that a non-citizen's detention was not unconstitutionally indefinite when it was prolonged by a challenge to his removal order). Moreover, Petitioner's "private interests are further diminished by the fact that he is subject to an order of removal from the United States." *Rodriguez Diaz*, 53 F.4th at 1208. Thus, the Court should find that Petitioner's detention has not been prolonged, and his interests are not substantial.

In contrast, the Respondent has a strong interest in continuing Petitioner's detention to enforce its immigration laws and ensure that he can be removed from the United States under the removal order. The concern that Petitioner is a flight risk and danger to the community is not mere speculation but is supported and evidenced by his prior removal, prior convictions, and ties to MS-

13. Exhs. 3, 4, 5, 6, 7. Therefore, the first *Mathews* factor weighs in favor of the government and continued detention until his Ninth Circuit Petition for Review has been resolved.

The *Mathews* second factor is "the risk of an erroneous deprivation of [Petitioner's] interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards." *Mathews*, 424 U.S. at 335. This factor also weighs in favor of the government because, as discussed immediately above, Petitioner already has received substantial process in the fourteen months since he entered the United States. The fact that he has not had a prior bond hearing does not affect this analysis because detention under § 1225(b)(1) is mandatory until removal, and the Supreme Court has held that non-citizens subject to mandatory detention under 8 U.S.C. § 1225(b) are not entitled to a bond hearing. *Jennings,* 583 U.S. at 311-12; *compare Rodriguez Diaz*, 53 F.4th at 1209 (finding that, for detention under § 1226(a), which does allow for a bond hearing, the agency's procedures sufficiently protected the non-citizen's liberty interests under the second *Mathews* factor).

Indeed, Petitioner "received further procedural protections on the merits of his applications for relief from removal. This included the opportunity to seek a temporary stay of removal, which he sought and received" from the Ninth Circuit. *Rodriguez Diaz,* 53 F.4th at 1210. "Although further review of his removal order [will] take additional time and could thereby prolong his detention, [Petitioner] has not demonstrated that the fact of the review process following its ordinary course itself created a due process violation." *Id.* (citing *Demore v. Kim,* 538 U.S. 510, 531 n.14 (2003); *Prieto-Romero,* 534 F.32d at 1063-65 & n.9). Thus, this factor weighs in the government's favor.

Finally, the Government has a significant interest in Petitioner's detention. Not only did he unlawfully reenter the United States after having been previously removed, but he also has three prior convictions. [redacted] He was previously convicted of alien smuggling and removed. He thus presents both a flight risk and a danger to the community because he refuses to abide by this Country's laws. The Government also has a strong interest in effectuating the "system Congress devised." *Thuraissigiam*, 591 U.S. at 106. "The government's interest in efficient

administration of the immigration laws" is "weighty," and "it 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." *Landon,* 459 U.S. at 34. The system Congress devised requires detention until Petitioner's removal is complete.

In sum, all three of the *Mathews* factors weigh in the government's interest. The Court should find that Petitioner's detention is not prolonged and does not violate due process.

3. **The *Lopez* Factors Also Weigh in Favor of the Government.**

The *Lopez* factors also weigh in favor of the government.

First, the total length of Petitioner's detention to date is just over 14 months, most of which was the product of the delays caused by the Petitioner.

Second, this is not a case in which Petitioner's detention is indefinite. Petitioner is already subject to the November 12, 2024 final order of removal under § 1225(b)(1). ICE has not removed him because the Ninth Circuit has issued a stay of removal. As discussed above, briefing on the Petition for Review before the Ninth Circuit is nearly complete. Thus, any further delay should be limited to the Court's consideration of the briefs.

Third, Petitioner has not alleged that the government caused any delays in his removal proceedings. Instead, Petitioner has caused the delays that have resulted in his continued detention, including by filing multiple appeals, this habeas action, and the Ninth Circuit Petition for Review, which has resulted in a stay of removal.

V. CONCLUSION

For the foregoing reasons, the Court should deny Petitioner's habeas petition in its entirety.

Dated: January 9, 2026

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