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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10
11 LEILA MITIULISHVILI,
12
13 Petitioner,

Case No.: 26-cv-0387-RSH-JLB

**RETURN TO PETITION FOR WRIT
OF HABEAS CORPUS**

14 v.

15 WARDEN, Otay Mesa Detention
16 Center, et al.,

17 Respondents.
18

19
20 **I. INTRODUCTION**

21 Petitioner requests the Court to order her immediate release from Immigration
22 and Customs Enforcement (ICE) custody or require that she be afforded a bond
23 hearing. As an arriving alien and applicant for admission, however, Petitioner's
24 detention is mandated by 8 U.S.C. § 1225(b)(2) until the conclusion of her removal
25 proceedings. Accordingly, the Court should deny Petitioner's requests for relief.

26 **II. FACTUAL AND PROCEDURAL BACKGROUND**

27 Petitioner is a native and citizen of Russia. Exhibit (Ex.) 1 (I-213). On March 26,
28 2025, she applied for admission to the United States at the San Ysidro port of entry. She

1 did not then possess legal documentation to be in or enter the United States. She was
2 determined to be an arriving alien inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I),
3 placed into expedited removal proceedings under 8 U.S.C. § 1225(b)(1), and taken into
4 Immigration and Customs Enforcement (ICE) custody pursuant to 8 U.S.C. § 1225(b).
5 *Id.* On June 26, 2025, she was issued a Notice to Appear (NTA). The filing of the NTA
6 initiated removal proceedings, pursuant to 8 U.S.C. § 1229a, against Petitioner, and
7 those proceedings remain ongoing. Within her removal proceedings under § 1229a,
8 Petitioner applied for relief from removal before an immigration judge (IJ), including
9 asylum under 8 U.S.C. § 1158, withholding of removal under 8 U.S.C. § 1231(b)(3),
10 and relief under the Convention Against Torture. On November 19, 2025, Petitioner
11 appeared before an immigration judge for an individual merits hearing on her
12 applications for relief from removal. The immigration judge denied the applications for
13 relief and ordered her removed to Russia. Ex. 2 (IJ Removal Order). Petitioner appealed
14 the removal order to the Board of Immigration Appeals on December 15, 2025. The
15 appeal remains pending.

16 As a result, there is no administratively final order of removal at this time and
17 Petitioner remains mandatorily detained under 8 U.S.C. § 1225(b)(2)(A).

18 III. STATUTORY BACKGROUND

19 Section 235 of the Immigration and Nationality Act (INA), codified at 8 U.S.C.
20 § 1225, applies to an “applicant for admission,” defined as an “alien present in the
21 United States who has not been admitted” or “who arrives in the United States.” 8
22 U.S.C. § 1225(a)(1). “[A]pplicants for admission fall into one of two categories, those
23 covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings v. Rodriguez*,
24 583 U.S. 281, 287 (2018).

25 Section 1225(b)(1) applies to arriving aliens and “certain other” aliens “initially
26 determined to be inadmissible due to fraud, misrepresentation, or lack of valid
27 document.” *Id.* (citing 8 U.S.C. § 1225(b)(1)(A)(i)). These aliens are generally subject
28 to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if “the alien

1 indicates an intention to apply for asylum . . . or a fear of persecution,” immigration
2 officers will refer the alien for a credible fear interview. 8 U.S.C. § 1225(b)(1)(A)(ii).
3 “If the officer determines at the time of the interview that [the] alien has a credible fear
4 of persecution . . . , the alien *shall be detained* for further consideration of the
5 application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii) (emphasis added). If the alien
6 does not indicate an intent to apply for asylum, does not express a fear of persecution,
7 or is “found not to have such a fear,” they “shall be detained . . . until removed” from
8 the United States. 8 U.S.C. §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

9 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*,
10 583 U.S. at 287. It “applies to all applicants for admission not covered by §
11 1225(b)(1).” *Id.* Under § 1225(b)(2), an alien “who is an applicant for admission” shall
12 be detained for a removal proceeding “if the examining immigration officer determines
13 that [the] alien seeking admission is not clearly and beyond a doubt entitled to be
14 admitted.” 8 U.S.C. § 1225(b)(2)(A); *Matter of Q. Li*, 29 I&N Dec. 66, 68 (BIA 2025)
15 (“for aliens arriving in and seeking admission into the United States who are placed
16 directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. §
17 1225(b)(2)(A), mandates detention ‘until removal proceedings have concluded.’”) (citing
18 *Jennings*, 583 U.S. at 299). However, DHS has the sole discretionary authority
19 to temporarily release on parole “any alien applying for admission to the United States”
20 on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.”
21 *Id.* § 1182(d)(5)(A); see *Biden v. Texas*, 597 U.S. 785, 806 (2022).

22 IV. ARGUMENT

23 Petitioner’s habeas petition should be denied because she is lawfully detained
24 under the INA and the Constitution.

25 1. Petitioner is mandatorily detained under 8 U.S.C. § 1225(b)(2).

26 Petitioner’s claim fails because she is subject to mandatory detention under 8
27 U.S.C. § 1225(b)(2). Under 8 U.S.C. § 1225(a)(1), an “applicant for admission” is
28 defined as an “alien present in the United States who has not been admitted or who

1 arrives in the United States.” As explained above, applicants for admission “fall into
2 one of two categories, those covered by § 1225(b)(1) and those covered by §
3 1225(b)(2).” *Jennings*, 583 U.S. at 287.

4 Section 1225(b)(2)(A) requires mandatory detention of “an alien who is *an*
5 *applicant for admission*, if the examining immigration officer determines that an alien
6 seeking admission is not clearly and beyond a doubt entitled to be admitted[.]” *Chavez*
7 *v. Noem*, No. 3:25-cv-02325, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24, 2025)
8 (quoting 8 U.S.C. § 1225(b)(2)(A)) (emphasis in original). Petitioner contends that she
9 is entitled to a bond hearing. But the Supreme Court has rejected such contention,
10 explaining: “Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of
11 applicants for admission until certain proceedings have concluded. . . . Nothing in the
12 statutory text imposes any limit on the length of detention. And neither § 1225(b)(1)
13 nor § 1225(b)(2) says anything whatsoever about bond hearings.” *Jennings*, 583 U.S. at
14 297. Except for temporary parole granted at the discretion of the Attorney General “for
15 urgent humanitarian reasons or significant public benefit” under 8 U.S.C. § 1182(d)(5),
16 “there are no *other* circumstances under which aliens detained under § 1225(b) may be
17 released.” *Id.* at 300 (emphasis in original).

18 As Petitioner’s removal proceedings are pending, and she has not been granted
19 temporary parole, section 1225(b)(2) mandates her detention until the proceedings have
20 concluded. *Jennings*, 583 U.S. at 297 (“Once those proceedings end, detention under
21 § 1225(b) must end as well.”). Because Petitioner is lawfully detained under
22 section 1225(b)(2) and the statute does not entitle her to a bond hearing at this time, her
23 petition must be denied. *See, e.g., Zelaya-Gonzalez v. Matuszewski*, No. 23-CV-151
24 JLS-KSC, 2023 WL 3103811, at *3 (S.D. Cal. April 25, 2023) (applying *Jennings* to
25 find that the petitioner had no right to release or a bond hearing).

26 **2. Petitioner’s detention does not violate due process.**

27 In *Jennings*, the Supreme Court evaluated the proper interpretation of 8 U.S.C.
28 § 1225(b). The Supreme Court stated that, “[r]ead most naturally, [8 U.S.C.]

1 §§ 1225(b)(1) and (b)(2) . . . mandate detention of applicants for admission until certain
2 proceedings have concluded.” *Id.* at 297. In other words, neither 8 U.S.C. § 1225(b)(1)
3 nor § 1225(b)(2) “impose[] any limit on the length of detention” and “neither
4 § 1225(b)(1) nor § 1225(b)(2) say[] anything whatsoever about bond hearings.” *Id.* The
5 Supreme Court added that the sole means of release for noncitizens detained pursuant
6 to 8 U.S.C. §§ 1225(b)(1) or (b)(2) prior to removal from the United States is temporary
7 parole at the discretion of the Attorney General under 8 U.S.C. § 1182(d)(5). *Id.* at 300
8 (“That express exception to detention implies that there are no *other* circumstances
9 under which aliens detained under [8 U.S.C.] § 1225(b) may be released.”) (emphasis
10 in original). “In sum, [8 U.S.C.] §§ 1225(b)(1) and (b)(2) mandate detention of aliens
11 throughout the completion of applicable proceedings[.]” *Id.* at 302.

12 In *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 207–09 (1953), a
13 noncitizen in exclusion proceedings filed a habeas petition claiming that his prolonged
14 detention without a hearing violated his constitutional rights. The Supreme Court
15 rejected the petition, concluding that the noncitizen’s continued detention did not
16 deprive him of any due process rights, stating: “[A]n alien on the threshold of initial
17 entry stands on a different footing: ‘Whatever the procedure authorized by Congress
18 is, it is due process as far as an alien denied entry is concerned.’” *Id.* at 212 (citation
19 omitted).

20 In *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 138–40
21 (2020), the Supreme Court once again addressed the due process rights of individuals
22 like Petitioner—inadmissible arriving noncitizens seeking initial entry into the United
23 States. The Supreme Court stated that such individuals have no due process rights
24 “other than those afforded by statute.” *Id.* at 107; *see also id.* at 140 (“[A]n alien in
25 respondent’s position has only those rights regarding admission that Congress has
26 provided by statute.”). The Supreme Court noted that its determination was supported
27 by “more than a century of precedent.” *Id.* at 138 (citing *Nishimura Ekiu v. United*
28 *States*, 142 U.S. 651, 660 (1892); *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537,

1 544 (1950); *Mezei*, 345 U.S. at 212; *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)).
2 Because the only process due Petitioner is that afforded under section 1225(b), the
3 Court must reject her claim that her detention violates the Fifth Amendment’s Due
4 Process Clause and deny her requested relief. *See Thuraissigiam*, 591 U.S. at 138–40;
5 *Mendoza-Linares*, 51 F.4th at 1167; *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206
6 (9th Cir. 2022) (“The recognized liberty interests of U.S. citizens and aliens are not
7 coextensive: the Supreme Court has ‘firmly and repeatedly endorsed the proposition
8 that Congress may make rules as to aliens that would be unacceptable if applied to
9 citizens.’”) (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)); *Zelaya-Gonzalez*,
10 2023 WL 3103811, at *4 (“Binding Ninth Circuit and Supreme Court precedents are
11 clear that Petitioner lacks any rights beyond those conferred by statute, and no statute
12 entitles Petitioner to a bond hearing.”).

13 Since the Supreme Court’s decision in *Thuraissigiam*, numerous published
14 decisions have acknowledged *Thuraissigiam*’s impact on the precise Fifth Amendment
15 Due Process Clause that Petitioner might have raised in this petition: Does an alien
16 detained under 8 U.S.C. § 1225(b)(1) have a due process right to release or a bond
17 hearing after being detained for a certain period of time? The answer is no. *See*
18 *Mendoza-Linares v. Garland*, No. 21-cv-1169-BEN (AHG), 2024 WL 3316306, *2
19 (S.D. Cal. June 10, 2024) (“[T]he Court finds that Petitioner has no Fifth Amendment
20 right to a bond hearing pending his removal proceedings.”); *Zelaya-Gonzalez*, 2023
21 WL 3103811. *3 (S.D. Cal. Apr. 25, 2023) (same); *Rodriguez Figueroa v. Garland*,
22 535 F. Supp. 3d 122, 126–27 (W.D.N.Y. 2021); *Gonzales Garcia v. Rosen*, 513 F.
23 Supp. 3d 329, 336 (W.D.N.Y. 2021); *St. Charles v. Barr*, 514 F. Supp. 3d 570, 579
24 (W.D.N.Y. 2021); *Petgrave v. Aleman*, 529 F. Supp. 3d 665, 667 (S.D. Tex. 2021).

25 Even if the Court infers a constitutional right against prolonged mandatory
26 detention, Petitioner’s claim still fails. “In general, as detention continues past a year,
27 courts become extremely wary of permitting continued custody absent a bond hearing.”
28 *Sibomana v. LaRose*, No. 22-cv-933-LL-NLS, 2023 WL 3028093, at *4 (S.D. Cal.

1 April 20, 2023) (citation omitted); *see also Durand v. Allen*, No. 3:23-cv-00279-RBM-
2 BGS, 2024 WL 711607, at *5 (S.D. Cal. Feb. 21, 2024) (detained over two-and-a-half
3 years); *Sanchez-Rivera v. Matuszewski*, No. 22-cv-1357-MMA (JLB), 2023 WL
4 139801, at *6 (S.D. Cal. Jan. 9, 2023) (three years); *Yagao v. Figueroa*,
5 No. 17-cv-2224-AJB-MDD, 2019 WL 1429582, at *2 (S.D. Cal. March 29, 2019) (two
6 years). Petitioner’s detention falls significantly short of the length these courts have
7 found to raise due process concerns.

8 In similar cases, courts in this district have applied the test in *Lopez v. Garland*,
9 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022). *See, e.g., Sanchez-Rivera*, 2023 WL 139801,
10 at *5 (“[W]hile the *Mathews [v. Eldridge]*, 424 U.S. 319 (1976)] factors may be well-
11 suited to determining whether due process requires a second bond hearing, they are not
12 particularly dispositive of whether prolonged mandatory detention has become
13 unreasonable in a particular case.”); *D.D. v. LaRose, et al.*, Case No. 25-cv-02581-BJC-
14 JLB, ECF No. 10 at 7 (S.D. Cal. Oct. 22, 2025) (considering a similar claim and finding
15 “the three-factor balancing test from *Lopez* . . . provides an appropriate assessment of
16 the possible constitutional implications of Petitioner’s ongoing detention without
17 process.”).

18 Under *Lopez*, to determine whether continued mandatory detention has become
19 unreasonable, “the Court will look to the total length of detention to date, the likely
20 duration of future detention, and the delays in the removal proceedings caused by the
21 petitioner and the government.” 631 F. Supp. 3d at 879.

22 First, Petitioner has been detained for just over 10 months. There was one delay
23 of the master calendar hearing in July 10, 2025 to August 21, 2025 at the request of the
24 Petitioner. Courts in this district have found detention for much longer periods to be
25 unreasonably prolonged. *See Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS, 2024
26 WL 711607 at *5 (S.D. Cal. Feb. 21, 2024) (32 months); *Sibomana*, 2023 WL
27 3028093, at *4 (19 months); *Sanchez-Rivera*, 2023 WL 139801 at *6 (three years);
28 *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 773 (S.D. Cal. 2020) (27 months); *Yagao*, 2019

1 WL 1429582, at *1 (42 months). The length of detention “is the most important factor.”
2 *Sanchez-Rivera*, 2023 WL 139801, at *6 (citation omitted). Petitioner’s current
3 detention does not fall within the range those courts have found to be unreasonable.
4 Moreover, the length of Petitioner’s detention, by itself, does not favor granting habeas
5 relief. *See Sadeqi v. LaRose*, No. 25-cv-2587-RSH-BJW, 2025 WL 3154520, at *3
6 (S.D. Cal. Nov. 12, 2025) (“The Court agrees with Respondents that the length of
7 Petitioner’s detention to date—almost 12 months—does not by itself, without more,
8 establish prolonged detention in violation of due process.”). Not only does the length
9 of Petitioner’s detention fall comparatively short of the length courts in this district
10 have found to warrant habeas relief, but the other *Lopez* factors do not favor habeas
11 relief either. Second, the likely duration of future detention weighs against Petitioner.
12 Petitioner’s individual merits hearing has been held and the Board of Immigration
13 Appeals is considering her appeal at which point her path to release or removal should
14 be clear. Finally, there is no indication of delay in the removal proceedings on the part
15 of the government.

16 Balancing the above factors, the record does not support a finding that “detention
17 has become so unreasonable as to require an initial bond hearing,” *Sanchez-Rivera*,
18 2023 WL 139801, at *6, or an order requiring Petitioner’s release.

19 Petitioner was lawfully detained when she applied for admission to the United
20 States. As a result, Petitioner is rightly considered an applicant for admission, and her
21 mandatory detention does not violate due process. *See Markov v. LaRose*, No. 25-CV-
22 3811 JLS (SBC), 2026 WL 92069 (S.D. Cal. Jan. 13, 2026) (“Petitioner’s length of
23 detention, without more, does not render his detention unreasonable.”); *Duran Romero*
24 *v. LaRose*, No. 25-cv-3567-AGS-VET, ECF No. 7 (S.D. Cal. Jan. 14, 2026); *Shahin v.*
25 *Noem*, No. 25-cv-2496-AGS-KSC, ECF No. 12 (S.D. Cal. Dec. 23, 2025); *Cordova*
26 *Cordova*, No. 25-cv-2426-BAS-DDL, ECF No. 9 (S.D. Cal. Nov. 14, 2025); *Mendez*
27 *Ramirez*, 612 F. Supp. 3d at 221; *Gonzalez Aguilar v. Wolf*, 448 F. Supp. 3d at 1212;
28 *de la Rosa Espinoza*, 2020 WL 3452967, at *6-8.

1 **V. CONCLUSION**

2 For the reasons stated herein, Respondents respectfully request that the Court
3 deny this petition on the merits.

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5 Dated: February 5, 2026

Respectfully submitted,

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