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

10
11 ERIK MERCADO-ARECHIGA,

Case No. 26-cv-0683-JES-DEB

12 Petitioner,

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

13
14 v.

15 CHRISTOPHER LAROSE, *et al.*,

16 Respondents.
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20 **I. INTRODUCTION**

21 Petitioner requests the Court to order his immediate release from Immigration
22 and Customs Enforcement (ICE) custody or require that he be afforded a bond hearing.
23 As an arriving alien found to have a credible fear of persecution, however, Petitioner's
24 detention is mandated by 8 U.S.C. § 1225(b)(1)(B)(ii) until the conclusion of his
25 removal proceedings. As Petitioner is subject to mandatory detention under 8 U.S.C. §
26 1225(b)(1)(B)(ii) and has been provide numerous bond hearings on the merits, the
27 Court should deny Petitioner's requests for relief.
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II. FACTUAL AND PROCEDURAL BACKGROUND

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2 Petitioner is a native and citizen of Mexico, who entered the United States
3 without inspection at the San Ysidro Port of Entry by attempting to run through the
4 vehicle inspection lanes on January 4, 2020. Exhibit (Ex.)1 (Form I-213).¹ He was
5 determined to be an arriving alien inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I),
6 placed into expedited removal proceedings under 8 U.S.C. § 1225(b)(1), and taken into
7 Immigration and Customs Enforcement (ICE) custody pursuant to 8 U.S.C.
8 § 1225(b)(1)(B). Exhibit 1 (I-213). In March 2020, the Government of Mexico issued a
9 warrant for Petitioner’s arrest for homicide. Ex. 2 (Warrant). He was then interviewed
10 by an asylum officer, pursuant to 8 U.S.C. § 1225(b)(1)(B) which resulted in a positive
11 credible fear determination. Petitioner was issued a Notice to Appear (NTA) on March
12 18, 2020. Ex. 3 (NTA). The filing of the NTA initiated removal proceedings, pursuant
13 to 8 U.S.C. § 1229a, against Petitioner. Petitioner applied for relief from removal before
14 an immigration judge (IJ), including asylum under 8 U.S.C. § 1158, withholding of
15 removal under 8 U.S.C. § 1231(b)(3), and relief under the Convention Against Torture.
16 An IJ ordered Petitioner removed to Mexico on December 17, 2020. Petitioner appealed
17 the removal order up to the Ninth Circuit Court of Appeals which granted his appeal in
18 part and remanded to the Board of Immigration Appeals (BIA) which remanded to an
19 immigration judge on July 17, 2024. These removal proceedings are still ongoing. His
20 merits hearing is scheduled for March 12, 2026.

21 Prior to his detention in 2020, Petitioner had been convicted of several offenses
22 in the United States to include vehicle theft, trespass, maintaining a public nuisance and
23 four convictions for illegal entry into the United States. Ex. 4 (BIA Bond Appeal order
24 8/27/25) at 3-4.

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27 ¹ The attached exhibits are true copies, with redactions of private information, of
28 documents obtained from Immigration and Customs Enforcement (ICE) counsel. Other
facts have been obtained from ICE counsel.

1 While in detention, Petitioner has requested and received at least seven bond
2 hearings on the merits and made four appeals of the denial of his bond requests. *Id.*; Ex.
3 5 (BIA Bond Appeal order 5/28/21); Ex. 6 (BIA Bond Appeal order 9/7/21); Ex. 7 (BIA
4 Bond Appeal order 1/8/24); Ex. 8 (IJ Bond Order 2/2/21); Ex. 9 (IJ Bond Order
5 11/18/21); Ex. 10 (IJ Bond Order 11/21/22); Ex.11 (IJ Bond Order 8/29/23); Ex. 12 (IJ
6 Bond Order 10/16/23); Ex. 13 (IJ Bond Order 5/6/25); Ex. 14 (IJ Bond Order 1/22/26);
7 ECF No. 1, Exs. C, D, H, G, I). Petitioner also requested parole which DHS considered
8 and denied on November 29, 2022. Ex. 9 (DHS Notice Denying Parole).

9 III. STATUTORY BACKGROUND

10 Section 235 of the Immigration and Nationality Act (INA), codified at 8 U.S.C.
11 § 1225, applies to an “applicant for admission,” defined as an “alien present in the
12 United States who has not been admitted” or “who arrives in the United States.” 8
13 U.S.C. § 1225(a)(1). “[A]pplicants for admission fall into one of two categories, those
14 covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings v. Rodriguez*,
15 583 U.S. 281, 287 (2018).

16 Section 1225(b)(1) applies to arriving aliens and “certain other” aliens “initially
17 determined to be inadmissible due to fraud, misrepresentation, or lack of valid
18 document.” *Id.* (citing 8 U.S.C. § 1225(b)(1)(A)(i)). These aliens are generally subject
19 to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if “the alien
20 indicates an intention to apply for asylum . . . or a fear of persecution,” immigration
21 officers will refer the alien for a credible fear interview. 8 U.S.C. § 1225(b)(1)(A)(ii).
22 “If the officer determines at the time of the interview that [the] alien has a credible fear
23 of persecution . . . , the alien *shall be detained* for further consideration of the
24 application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii) (emphasis added). If the alien
25 does not indicate an intent to apply for asylum, does not express a fear of persecution,
26 or is “found not to have such a fear,” they “shall be detained . . . until removed” from
27 the United States. 8 U.S.C. §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

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IV. ARGUMENT

A. Petitioner is Lawfully Detained Under the INA and the Constitution.

Even if the Court assumed jurisdiction to review Petitioner’s claim, the Court must deny his habeas petition because Petitioner’s detention is statutorily mandated under 8 U.S.C. § 1225(b)(1)(B)(ii) and has not been unconstitutionally prolonged.

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

Petitioner is an arriving alien. Ex. 1. As discussed above, arriving aliens are applicants for admission who are subject to expedited removal proceedings, *see* 28 U.S.C. § 1225(b)(1)(A)(i), unless—as occurred here—an asylum officer has determined that they have a credible fear of persecution, *see* 28 U.S.C. § 1225(b)(1)(B)(ii). In such cases, the INA mandates that “the alien *shall be detained* for further consideration of the application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii) (emphasis added); *see also Matter of M-S*, 27 I. & N. Dec. 509, 519 (AG 2019) (“all aliens transferred from expedited to full [removal] proceedings after establishing a credible fear are ineligible for bond”). Because Petitioner is an arriving alien found to have a credible fear of persecution and placed in full removal proceedings, his detention is mandated by section 1225(b) until the conclusion of his removal proceedings. *See Jennings*, 583 U.S. at 302 (“§§ 1225(b)(1) and (b)(2) mandate detention of aliens throughout the completion of applicable proceedings”).

Petitioner requests that the Court order his release from ICE custody. But the Supreme Court has rejected such contention, explaining: “Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded. . . . Nothing in the statutory text imposes any limit on the length of detention. And neither § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings.” *Jennings*, 583 U.S. at 297. Except for temporary parole granted at the discretion of the Attorney General “for urgent humanitarian

1 reasons or significant public benefit” under 8 U.S.C. § 1182(d)(5), “there are no *other*
2 circumstances under which aliens detained under § 1225(b) may be released.” *Id.* at 300
3 (emphasis in original).

4 As Petitioner’s removal proceedings are pending, and he has not been granted
5 temporary parole, section 1225(b)(1)(B) mandates his detention until the proceedings
6 have concluded. *Jennings*, 583 U.S. at 297 (“Once those proceedings end, detention
7 under § 1225(b) must end as well.”). Because Petitioner is lawfully detained under
8 section 1225(b)(1)(B) and the statute does not entitle him to release at this time, his
9 petition must be denied. *See, e.g., Zelaya-Gonzalez v. Matuszewski*, No. 23-CV-151
10 JLS-KSC, 2023 WL 3103811, at *3 (S.D. Cal. April 25, 2023) (applying *Jennings* to
11 find that the petitioner had no right to release or a bond hearing).

12 **2. Respondents afforded Petitioner due process.**

13 In *Jennings*, the Supreme Court evaluated the proper interpretation of 8 U.S.C.
14 § 1225(b). The Supreme Court stated that, “[r]ead most naturally, [8 U.S.C.]
15 §§ 1225(b)(1) and (b)(2) . . . mandate detention of applicants for admission until certain
16 proceedings have concluded.” *Id.* at 297. In other words, neither 8 U.S.C. § 1225(b)(1)
17 nor § 1225(b)(2) “impose[] any limit on the length of detention” and “neither
18 § 1225(b)(1) nor § 1225(b)(2) say[] anything whatsoever about bond hearings.” *Id.* The
19 Supreme Court added that the sole means of release for noncitizens detained pursuant
20 to 8 U.S.C. §§ 1225(b)(1) or (b)(2) prior to removal from the United States is temporary
21 parole at the discretion of the Attorney General under 8 U.S.C. § 1182(d)(5). *Id.* at 300
22 (“That express exception to detention implies that there are no *other* circumstances
23 under which aliens detained under [8 U.S.C.] § 1225(b) may be released.”) (emphasis
24 in original). “In sum, [8 U.S.C.] §§ 1225(b)(1) and (b)(2) mandate detention of aliens
25 throughout the completion of applicable proceedings[.]” *Id.* at 302.

26 In *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 207–09 (1953), a
27 noncitizen in exclusion proceedings filed a habeas petition claiming that his prolonged
28 detention without a hearing violated his constitutional rights. The Supreme Court

1 rejected the petition, concluding that the noncitizen’s continued detention did not
2 deprive him of any due process rights, stating: “[A]n alien on the threshold of initial
3 entry stands on a different footing: ‘Whatever the procedure authorized by Congress
4 is, it is due process as far as an alien denied entry is concerned.’” *Id.* at 212 (citation
5 omitted).

6 In *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 138–40
7 (2020), the Supreme Court once again addressed the due process rights of individuals
8 like Petitioner—inadmissible arriving noncitizens seeking initial entry into the United
9 States. The Supreme Court stated that such individuals have no due process rights
10 “other than those afforded by statute.” *Id.* at 107; *see also id.* at 140 (“[A]n alien in
11 respondent’s position has only those rights regarding admission that Congress has
12 provided by statute.”). The Supreme Court noted that its determination was supported
13 by “more than a century of precedent.” *Id.* at 138 (citing *Nishimura Ekiu v. United*
14 *States*, 142 U.S. 651, 660 (1892); *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537,
15 544 (1950); *Mezei*, 345 U.S. at 212; *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)).
16 Because the only process due Petitioner is that afforded under section 1225(b), the
17 Court must reject his claim that his detention violates the Fifth Amendment’s Due
18 Process Clause and deny his requested relief. *See Thuraissigiam*, 591 U.S. at 138–40;
19 *Mendoza-Linares*, 51 F.4th at 1167; *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206
20 (9th Cir. 2022) (“The recognized liberty interests of U.S. citizens and aliens are not
21 coextensive: the Supreme Court has ‘firmly and repeatedly endorsed the proposition
22 that Congress may make rules as to aliens that would be unacceptable if applied to
23 citizens.’”) (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)); *Zelaya-Gonzalez*,
24 2023 WL 3103811, at *4 (“Binding Ninth Circuit and Supreme Court precedents are
25 clear that Petitioner lacks any rights beyond those conferred by statute, and no statute
26 entitles Petitioner to a bond hearing.”).

27 Since the Supreme Court’s decision in *Thuraissigiam*, numerous published
28 decisions have acknowledged *Thuraissigiam*’s impact on the precise Fifth Amendment

1 Due Process Clause that Petitioner might have raised in this petition: Does an alien
2 detained under 8 U.S.C. § 1225(b)(1) have a due process right to release or a bond
3 hearing after being detained for a certain period of time? The answer is no. *See*
4 *Mendoza-Linares v. Garland*, No. 21-cv-1169-BEN (AHG), 2024 WL 3316306, *2
5 (S.D. Cal. June 10, 2024) (“[T]he Court finds that Petitioner has no Fifth Amendment
6 right to a bond hearing pending his removal proceedings.”); *Zelaya-Gonzalez*, 2023
7 WL 3103811. *3 (S.D. Cal. Apr. 25, 2023) (same); *Rodriguez Figueroa v. Garland*,
8 535 F. Supp. 3d 122, 126–27 (W.D.N.Y. 2021); *Gonzales Garcia v. Rosen*, 513 F.
9 Supp. 3d 329, 336 (W.D.N.Y. 2021); *St. Charles v. Barr*, 514 F. Supp. 3d 570, 579
10 (W.D.N.Y. 2021); *Petgrave v. Aleman*, 529 F. Supp. 3d 665, 667 (S.D. Tex. 2021).

11 Even if the Court infers a constitutional right against prolonged mandatory
12 detention, Petitioner’s claim still fails. Petitioner has been provided numerous bond
13 hearings which resulted in the denial of bond by an immigration judge on the merits.
14 On four occasions, the immigration judges’ orders denying Petitioner bond were
15 reviewed and affirmed by the Board of Immigration Appeals. Respondents have
16 provided Petitioner with substantive and procedural due process opportunities. Much
17 of the delay in this case is the result of Petitioner exercising those rights. This delay is
18 not attributable to the Respondents. *See Ahmed v. Tate*, No. 4:19-cv-4889, 2020 WL
19 3402856, at *4 (S.D. Texas. June 19, 2020) (denying habeas petition for detention over
20 a year because “had Ahmed not filed a Motion to Reconsider and Stay with BIA, he
21 would have been deported some five months ago” and therefore “it is not action of the
22 Government that has kept him in ‘detention;’ but it is his own appeal”); *Severino-*
23 *Zuniga v. Attorney General*, No. 17-cv-529, 2017 WL 6419001, at *4–5 (S.D. Cal.
24 Dec. 15, 2017) (denying habeas petition for detention “for well over a year,” in part,
25 because “the delay in his removal directly correlates with the various petitions and
26 appeals he has pursued during his review process”); *Gomez v. Holder*, No. SACV-13-
27 718 (MAN), 2013 WL 12144082, at *2 (C.D. Cal. May 6, 2013) (denying habeas
28 petition because “[a]ny delay is the result of Petitioner’s own efforts to delay the

1 removal. As such, Petitioner is not entitled to relief for her allegedly ‘indefinite
2 detention.’”). Because Petitioner’s has not received the results he wants does not then
3 mean that he is entitled to relief.

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

14 **V. CONCLUSION**

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

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18 Dated: February 13, 2026

Respectfully submitted,

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