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16 **UNITED STATES DISTRICT COURT**
17 **SOUTHERN DISTRICT OF CALIFORNIA**

18 A.H.,

19 Petitioner,

20 v.

21 CHRISTOPHER LAROSE, et al.,

22 Respondents.

Case No.: 26-CV-01729-JO-DDL

MOTION TO RECONSIDER

23 Pursuant to Federal Rule of Civil Procedure 59(e), Respondents hereby seek
24 renewed consideration of this Court's Minute Order, ECF No. 11, and Order Granting
25 Petition for Writ of Habeas Corpus, ECF No. 11. Regretfully, Respondents made a
26 manifest error of law and fact in their Response to the Petition for Writ of Habeas
27 Corpus, ECF No. 6, in not correcting Petitioner's assertion that 8 U.S.C. § 1231 is the
28 statute governing Petitioner's detention rather than 8 U.S.C. § 1225(b)(1)(B)(ii),
because Petitioner's administrative order of removal, stayed by the Ninth Circuit Court

1 of Appeals while it considers his Petition for Review, is not yet a final order.¹ *See Avilez*
2 *v. Garland*, 69 F.4th 525, 531 (9th Cir. 2023) (citing 8 U.S.C. § 1231(a)(1)(B)(i)–(iii)).
3
4 Thus, applying *Zadvydas v. Davis*, 533 U.S. 678 (2001), to find that Respondents had
5 not established a significant likelihood that Petitioner will be removed in the reasonably
6 foreseeable future, when Respondents do not yet have an order to remove Petitioner,
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8 was manifest error. *See* Minute Order, ECF No. 10, ¶ 3.

9 The Court reasonably relied on Respondents’ error, resulting in Orders that
10 directly contravene established Supreme Court and Ninth Circuit precedent.
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12 Respondents respectfully ask this Court to reconsider its findings by applying the
13 correct statutory authorities and issue a new Order recognizing Petitioner, as an alien
14 arrested soon after crossing the border and with no final order of removal, is properly
15 subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii) and reversing
16
17 its April 2 Orders.

18 Under Rule 59(e), reconsideration may be granted “(1) if such motion is
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20 necessary to correct manifest errors of law or fact upon which the judgment rests; (2) if
21 such motion is necessary to present newly discovered or previously unavailable
22 evidence; (3) if such motion is necessary to prevent manifest injustice; or (4) if the
23 amendment is justified by an intervening change in controlling law.” *Allstate Ins. Co. v.*
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27 ¹ In this case, those tasked with responding to the Petition on an expedited schedule
28 were unaware that Petitioner was detained pursuant to Section 1225 and did not realize the error in time for filing the return. Respondents sincerely apologize to the Court for this error.

1 *Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011) (citing *McDowell v. Calderon*, 197 F.3d
2 1253, 1255 n. 1 (9th Cir.1999)). Rule 59(e) “permits, if not encourages, a district court
3 to correct its own clear errors.” *Kaufmann v. Kijakazi*, 32 F.4th 843, 851 (9th Cir. 2022).
4 District courts enjoy considerable discretion in deciding Rule 59(e) motions. *Id.* at 850
5 (citing *Turner v. Burlington N. Santa Fe R.R. Co.*, 338 F.3d 1058, 1063 (9th Cir. 2003)).
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8 Here, it is Respondents’ clear error in their Response to the Petition for Writ of
9 Habeas Corpus that led to the Court’s manifest error of law in conducting an analysis
10 of Petitioner’s detention under *Zadvydas* on the incorrect premise that Petitioner is
11 subject to a final order of removal. An alien’s place “within this statutory [immigration]
12 scheme can affect whether his detention is mandatory or discretionary, as well as the
13 kind of review process available to him if he wishes to contest the necessity of his
14 detention.” *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008). *Zadvydas*
15 does not apply to Petitioner because he is detained pursuant to 8 U.S.C. § 1225
16 (b)(1)(B)(ii), not 8 U.S.C. § 1231.
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20 In *Zadvydas*, the Supreme Court held that an alien may be held in confinement
21 beyond the “removal period” established in 8 U.S.C. § 1231 until it has been determined
22 that there is no significant likelihood of removal in the reasonably foreseeable future.
23 533 U.S. at 682. This Court held that “Petitioner’s continued detention is unlawful under
24 *Zadvydas*, and he is entitled to immediate release.” ECF No. 10 ¶ 3. (italics added). In
25 coming to this holding, the Court relied upon Respondents’ acknowledgement in their
26 Response, ECF No. 6, that Petitioner is entitled to release under Section 1231(a)(3). *Id.*
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1 (“Given Respondents’ concession . . . the Court finds that Petitioner has shown—and
2 the government has not rebutted—that removal is not entirely foreseeable. *Zadvydas*,
3 533 U.S. at 701.”). Respondents’ acknowledgement was a manifest error of law.
4 Although this error arose from Respondents’ filing, reconsideration is merited under
5 Rule 59(e) because the Court’s Orders rest upon Respondents’ error. *See Allstate Ins.*
6 *Co.*, 634 F.3d at 1111.
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9 Respondents’ acknowledgement is a manifest error of law because Section 1231
10 by its terms cannot provide the statutory authority for either Petitioner’s detention or
11 any entitlement to release. Under Section 1231, titled “Detention and removal of aliens
12 ordered removed,” a noncitizen who is ordered removed shall be removed by the
13 Department of Homeland Security (“DHS”) within 90 days. 8 U.S.C. § 1231(a)(1)(A).
14 During these 90 days, which the statute refers to as the “removal period,” the noncitizen
15 must be detained. *Id.* “The removal period begins on the latest of the following: (i) The
16 date the order of removal becomes administratively final. (ii) If the removal order is
17 judicially reviewed and if a court orders a stay of the removal of the alien, the date of
18 the court’s final order[.]” *Vlasov v. Bondi*, 2025 WL 2258582, at *2 (S.D. Cal. 2025)
19 (citing *Avilez*, 69 F.4th 525, 531; 8 U.S.C. § 1231(a)(1)(B)(i)–(iii)).
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22 In *Prieto-Romero v. Clark*, the Ninth Circuit held that Section 1231(a) does not
23 provide authority to detain an alien after the Board of Immigration Appeals has affirmed
24 a final removal order but the order is stayed pending review before the court of appeals,
25 pursuant to 8 U.S.C. § 1252(a)(1). 534 F.3d 1053, 1059 (9th Cir. 2008). The legal
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1 posture discussed in *Prieto-Romero* is the exact posture of Petitioner. Although
2 Petitioner has an administratively final order of removal as of August 8, 2025, the Ninth
3 Circuit has ordered a stay of the removal order. *See* Attachment 1, Declaration of Denise
4 Barroga, ¶ 11. Once a stay of removal is issued, “[t]he removal period begins only after
5 the court denies the petition and withdraws the stay of removal.” *Prieto-Romero*, 534
6 F.3d at 1059. Therefore, Petitioner’s removal period will begin on the date of the Ninth
7 Circuit’s final order adjudicating Petitioner’s petition for review. *See* 8 U.S.C. § 1231
8 (a)(1)(B). Any current claim of prolonged detention under or in reliance upon Section
9 1231 is premature and entirely hypothetical.

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13 The Court should recognize that Petitioner is properly detained pursuant to 8
14 U.S.C. § 1225(b)(1). Section 1225(b)(1) of Title 8 sets forth expedited removal
15 proceedings for certain inadmissible arriving aliens, like Petitioner. An alien subject to
16 such expedited proceedings is normally ordered removed “without further hearing or
17 review” unless he or she indicates an intent to apply for asylum or a fear of persecution.
18 8 U.S.C. § 1225(b)(1)(A)(i). If an asylum officer “determines that an alien does not
19 have a credible fear of persecution, the officer shall order the alien removed from the
20 United States without further hearing or review.” 8 U.S.C. § 1225(b)(1)(B)(iii)(I). An
21 arriving alien who establishes a credible fear of persecution, like Petitioner, is subject
22 to mandatory detention. 8 U.S.C. § 1225(b)(1)(B)(ii); *see* Decl. ¶ 7. Further, such an
23 arriving alien “*shall* be detained for further consideration of the application for asylum.”
24 8 U.S.C. § 1225(b)(1)(B)(ii) (emphasis added); *see Jennings v. Rodriguez*, 583 U.S.

1 281, 299 (2018) (“The plain meaning of those phrases is that detention must continue
2 until immigration officers have finished ‘consider[ing]’ the application for asylum, §
3 1225(b)(1)(B)(ii), or until removal proceedings have concluded, § 1225(b)(2)(A).”).
4
5 The Supreme Court found no implicit right to release or a bond hearing under this
6 statutory authority because “§§ 1225(b)(1) and (b)(2), unlike § 1231(a)(6), provide for
7 detention for a specified period of time.” *Jennings*, 583 U.S. at 299.
8

9 Therefore, Petitioner was and is subject to mandatory detention pending
10 completion of proceedings regarding his application for relief from removal.
11 Petitioner’s judicial proceedings have not concluded as of April 13, 2026. *See* Decl.
12 ¶ 13. During these proceedings, Petitioner is not entitled to release or a bond hearing by
13 statute. In *Jennings*, the Supreme Court stated that “[r]ead most naturally, §§ 1225(b)(1)
14 and (b)(2) [] mandate detention of applicants for admission until certain proceedings
15 have concluded,” and that neither provision “imposes any limit on the length of
16 detention” or “says anything whatsoever about bond hearings.” 583 U.S. at 297. The
17 Supreme Court added aliens detained under these provisions may be temporarily
18 paroled at the discretion of the Attorney General under 8 U.S.C. § 1182(d)(5)(A), and
19 “[t]hat express exception to detention implies that there are no *other* circumstances
20 under which aliens detained under § 1225(b) may be released.” *Id.* at 300. The Supreme
21 Court specifically contemplated *Zadvydas* and held that the reasoning of *Zadvydas* does
22 not apply to detention under §§ 1225(b)(1) and (b)(2). *Id.* at 300-301. The Supreme
23 Court concluded: “In sum, §§ 1225(b)(1) and (b)(2) mandate detention of aliens
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1 throughout the completion of applicable proceedings and not just until the moment
2 those proceedings begin.” *Id.* at. 302.

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4 This conclusion conforms with the long-running understanding that the due
5 process rights of arriving aliens are limited. “Whatever the procedure authorized by
6 Congress is, it is due process as far as an alien denied entry is concerned.” *Shaughnessy*
7 *v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (citation and quotation omitted).
8 This was confirmed in *Thuraissigiam*, which held that “an alien at the threshold of initial
9 entry” has no procedural due process rights “other than those afforded by statute.” *Dep’t*
10 *of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107 (2020); *see id.* at 140 (An alien
11 “who tries to enter the country illegally is treated as an applicant for admission.”)
12 (internal quotation omitted). Applying *Thuraissigiam*, the Ninth Circuit concluded in
13 *Mendoza-Linares v. Garland* that any rights an arriving alien placed into expedited
14 removal proceedings under 8 U.S.C. § 1225(b)(1) “may have in regard to removal or
15 admission are purely statutory in nature and are not derived from, or protected by, the
16 Constitution’s Due Process Clause.” 51 F.4th 1146, 1167 (9th Cir. 2022).

17
18 In *Mendoza-Linares*, the Ninth Circuit reiterated that the rights of an arriving
19 alien subject to expedited removal proceedings are restricted to those set forth by
20 statute. *See id.* at 1164 (quoting *Thuraissigiam*, 591 U.S. at 139) (“Because the
21 ‘procedure authorized by Congress’ here purposefully precludes resort to the courts,
22 that denial of judicial review cannot be said to deny due process.”); *id.* at 1168
23 (“Mendoza-Linares lacks any constitutionally protected due process rights concerning
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1 whether he will be removed or admitted[.]”); *see also Guerrier v. Garland*, 18 F.4th
2 304, 310 (9th Cir. 2021) (“[I]n the expedited removal context, a petitioner’s due process
3 rights are coextensive with the statutory rights Congress provides.”); *Rauda v. Jennings*,
4 8 F.4th 1050, 1058 (9th Cir. 2021) (“Congress has already balanced the amount of due
5 process available to petitioners with the executive’s prerogative to remove individuals,
6 and we decline to expand judicial review beyond the parameters set by Congress.”).

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9 In conclusion, this Court’s finding that “Petitioner’s continued detention violates
10 his substantive due process rights under *Zadvydas* [full citation omitted]” is a manifest
11 error of law relying on Respondents’ erroneous representation that Petitioner was
12 detained pursuant to Section 1231. ECF Nos. 6 & 10. The statute under which an alien
13 is detained determines whether that detention is mandatory or discretionary, as well as
14 the kind of review process available. *Prieto-Romero*, 534 F.3d at 1057. Petitioner is
15 subject to detention pursuant to Section 1225(b)(1), under which detention is mandatory
16 and his due process rights are no more than what Congress has provided. Supreme Court
17 precedent is clear that Petitioner does not have a due process right to release and that
18 *Zadvydas* does not apply to an alien in Petitioner’s posture.

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22 Respondents note that the Court recently ordered the release of another individual
23 detained pursuant to Section 1225(b) in reliance on *Zadvydas* where no final order had
24 yet issued. *See Harpreet v. LaRose*, 3:26-cv-01970 (JO), Minute Order, Dkt. 11 ¶ 3
25 (“Because the Ninth Circuit has stayed Petitioner’s removal, the Court finds that there
26 is no significant likelihood that Petitioner will be removed in the foreseeable future.”)
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[. . .] Petitioner has therefore rebutted the Zadvydas presumption[.]” (citing *Banda v. McAleenan*, 385 F.Supp.3d 1099, 1119 (W.D. Wash., 2019)). But *Banda* expressly declined to adopt the *Zadvydas* six-month presumption in the context of mandatory detention under Section 1225(b), noting “Petitioner misreads *Zadvydas* . . . [A six month] rule is inconsistent with the fact-dependent nature of the constitutional question before the Court, namely whether petitioner’s prolonged detention has become unreasonable.” *Banda*, 385 F.Supp.3d at 1117.² And, as explained above, the Ninth Circuit, after *Banda*, made clear that “Section 1231(a) *does not apply* to detention during the pendency of administrative or judicial removal proceedings.” *Avilez*, 69 F.4th at 530–31 (emphasis added). While the *Banda* court found that petitioner’s mandatory detention under § 1225(b) had become unreasonably prolonged under facts similar to those here, the court ordered a bond hearing rather than immediate release. *Id.* at 1120.

² The *Banda* court noted two approaches to analyzing a due process right to a bond hearing:

Some courts rest their decisions predominately on the length of the noncitizen's detention. [. . .] Other courts engage in a case-specific analysis that involves consideration of several factors derived from *Zadvydas*, [*Demore v. Kim*, 538 U.S. 510 (2003)], and the First, Third, Sixth, and Eleventh Circuits' pre-*Jennings* decisions regarding the reasonableness of prolonged detention under § 1226(c)[.] . . . Those factors include “(1) the total length of detention to date; (2) the likely duration of future detention; (3) the conditions of detention; (4) delays in the removal proceedings caused by the detainee; (5) delays in the removal proceedings caused by the government; and (6) the likelihood that the removal proceedings will result in a final order of removal.”

Banda, 385 F.Supp.3d at 1116–17 (internal citations omitted). The *Banda* court adopted the second approach. *Id.* at 1117–20.

1 As explained above, Respondents disagree that an arriving alien detained pursuant to
2 § 1225(b) is entitled to either statutory or due process relief, but the Court should do no
3 more here than the *Banda* court did in granting a bond hearing rather than immediate
4 release.
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6 To the extent the Court may consider Petitioner detained pursuant to Section
7 1226(a), that statute is not applicable here. Petitioner was arrested by Customs and
8 Border Patrol (CBP) agents crossing the border and, but for a period of days in the
9 hospital, has been detained for his removal proceedings for the entire time he has been
10 present in the United States. Decl. ¶¶ 4–6. An alien who “‘arrives in the United States,’
11 or ‘is present’ in this country but ‘has not been admitted,’ is treated as ‘an applicant for
12 admission.’” *Jennings*, 583 U.S. at 287 (citing § 1225(a)(1)); *see also Thuraissigiam*,
13 591 U.S. at 140 (An alien “who tries to enter the country illegally is treated as an
14 applicant for admission.”) (quotation omitted); *id.* (“[A]nd an alien who is detained
15 shortly after unlawful entry cannot be said to have ‘effected an entry,’” and is in the
16 same position as an alien seeking admission at a port of entry) (quoting *Zadvydas*, 533
17 U.S. at 693). Conversely, Section 1226 “[a]s noted, [] applies to aliens already present
18 in the United States.” *Id.* at 303. Because Petitioner was arrested while entering
19 unlawfully, he was not “‘present in the United States” and would not be subject to
20 Section 1226 detention authority.”³
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27 ³ Even if Petitioner were detained subject to Section 1226, he would not be entitled to
28 release under *Zadvydas*. The Ninth Circuit in *Prieto-Romero* held that detention
pursuant to Section 1226(a) during judicial review does not constitute “indefinite and

1 In sum, this Court should reconsider and reverse its Order to release Petitioner
2 based on a finding of prolonged detention under Section 1231. Only when (or if)
3 Petitioner's removal order becomes final will he be subject to mandatory detention
4 under that statute, and only then will Respondents' 90-day window to undertake the
5 effort to remove him begin, either to his home country or to a third country. Finding
6 those efforts will be futile before they have even begun is improper, and the Court's
7 Order, based on Respondents' error, cannot stand. Under the proper statutory authority,
8 Section 1225(b)(1), Petitioner has no entitlement to release from detention while his
9 removal proceedings remain pending.
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13 For this reason the Court should vacate its Order entirely, including requiring a
14 written declaration providing "concrete arrangements for [Petitioner's] flight" 48 hours
15 prior to any redetention. ECF No. 10 ¶ 2. If the Ninth Circuit affirms Petitioner's
16 removal and lifts its stay, Petitioner will then become subject to a new mandatory
17 detention authority under Section 1231(a)(2). Thus, Petitioner's detention status will be
18 reset, as "Congress has mandated the detention of an alien ordered removed for 90 days,
19 so that the government will have adequate time to attempt to secure the alien's removal
20 through negotiations with foreign governments." *Khotesouvan v. Morones*, 386 F.3d
21 1298, 1299–1300 (9th Cir. 2004). This Court's declaration requirement is inconsistent
22 with Section 1231(a) and *Khotesouvan*, as it requires securing Petitioner's travel before
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potentially permanent" detention in violation of substantive due process rights. 534 F.3d
at 1063–1065.

1 redetaining him and just at the moment the removal period has begun. It remains
2 uncertain whether Petitioner will be ordered removed at all, much less to what country.
3
4 What is clear is that his removal proceedings have a definite end date—when the Ninth
5 Circuit rules on his Petition for Review. U.S. Immigration and Customs Enforcement is
6 ready to take affirmative steps to effectuate Petitioner’s removal at that time. Decl. ¶ 14.
7
8 This Court should refrain from engaging in speculation regarding Petitioner’s post-final
9 order detention under Section 1231(a) when that question is not yet properly before it.

10 Because of Respondents’ error before the Court, the Court’s Order is improper.
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12 The Court should reconsider the Order and find Petitioner is properly subject to
13 mandatory detention pending the conclusion of his removal proceedings.

14
15
16 DATED: April 13, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 13, 2026, I filed this document with the Clerk of the Court through the CM/ECF system, which will provide electronic notice and an electronic link to this document to all counsel of record. As of April 13, 2026, I arranged for this document to be sent by certified mail to Petitioner at:

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