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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Shahren Baghdasaryan,
10 Petitioner,
11 v.
12 Kristi Noem, et al.,
13 Respondents.
14

No. CV-26-01979-PHX-SPL (ASB)

REPORT AND RECOMMENDATION

15 **TO THE HONORABLE STEVEN P. LOGAN, UNITED STATES DISTRICT**
16 **JUDGE:**

17 Pending before the Court is pro se Petitioner Shahren Baghdasaryan's Petition for a
18 Writ of Habeas Corpus Under 28 U.S.C. § 2241 (Immigration detention) (Doc. 1)¹, filed
19 on March 23, 2026. Petitioner is detained at Eloy Detention Center and seeks release from
20 immigration custody or a bond hearing. (*Id.* at 5.) For the reasons that follow, undersigned
21 recommends the Petition be denied in part and granted in part.

22 **I. PROCEDURAL HISTORY AND BACKGROUND**

23 The facts before this Court appear largely undisputed. (*See* Docs. 1, 9.) Petitioner is
24 a citizen of Armenia who entered the United States on November 22, 2024, through the
25 Otay Mesa, California, Port of Entry. (Doc. 9-1 at 6.) Petitioner was detained upon arrival
26 to the United States and has remained in continuous Immigration and Customs
27 Enforcement ("ICE") detention as of the date of the filing of this Petition. (*See* Doc. 1 at 5;

28 ¹ Citation to the record indicates documents as they are displayed in the District of Arizona's official Court electronic document filing system under Case No. CV-26-01979-PHX-SPL (ASB).

1 Doc. 9 at 1-2). Petitioner was classified as an “arriving alien” and was issued a Notice to
2 Appear in immigration court with the charge as removable under Section 212(a)(7)(A)(i)(I)
3 of the Immigration and Nationality Act (“INA”). (Doc. 9-1 at 1.) Petitioner was given a
4 credible fear interview on January 11, 2025, and was assessed credible and as having
5 established a credible fear of persecution. (*Id.* at 9.) Accordingly, Petitioner’s expedited
6 removal procedures pursuant to INA Section 235(b)(1) were vacated due to a credible fear
7 determination under 8 C.F.R. § 208.30. (*Id.* at 1.)

8 On September 8, 2025, an Immigration Judge (“IJ”) denied Petitioner’s asylum
9 application. (Doc. 1 at 4; Doc. 9 at 1.) Petitioner filed with the Board of Immigration
10 Appeals (“BIA”) an appeal “from the denial of asylum/withholding/CAT and removal
11 order” on October 5, 2025. (Doc. 1 at 4.) Petitioner requested a bond hearing and on
12 December 11, 2025, an IJ found “‘no jurisdiction’ and therefore did not provide a custody
13 redetermination hearing.” (*Id.* at 2.)

14 Petitioner filed a form Petition in this Court on March 23, 2026, in which he contests
15 his detention pursuant to 28 U.S.C. § 2241. (Doc. 1.) The Court previously summarized
16 Petitioner’s arguments as follows:

17 Petitioner alleges his unreasonably prolonged detention without an
18 individualized bond hearing violates his due process rights. He seeks release
from custody or a bond hearing.

19 (Doc. 4 at 2.) Petitioner raises three grounds to support his Petition. (Doc. 1 at 5.) In Ground
20 One, Petitioner asserts that his prolonged civil detention without a meaningful
21 individualized custody hearing violates his Fifth Amendment due process rights. (*Id.*) In
22 Ground Two, Petitioner alleges that his detention has become unreasonably prolonged and
23 punitive as applied and violates the Fifth Amendment Due Process Clause. (*Id.*) Petitioner
24 asserts in Ground Three: “Statutory/Regulatory unlawfulness of continued detention
25 without access to any bond process (as applied) and/or failure to provide constitutionally
26 adequate process.” (*Id.*) Because the three claims Petitioner pleads all raise the same
27 substantive issue, i.e. that his prolonged detention violates his due process rights,
28 undersigned will address them together. (*See id.*)

1 Respondents U.S. Department of Homeland Security (“DHS”) Secretary
 2 Markwayne Mullin; U.S. ICE Acting Director Todd Lyons; and Warden of the Eloy
 3 Detention Center Eloy Rokosky (collectively, “Respondents”)² filed a Response to Petition
 4 for Writ of Habeas Corpus on April 16, 2026. (Doc. 9.) In their Response, Respondents
 5 argue that the Petition should be denied because Petitioner’s detention is statutorily
 6 authorized and not violative of due process. (*Id.* at 4-6.) Respondents argue that, as an
 7 “arriving alien,” Petitioner is properly detained under 8 U.S.C. § 1225(b)(2) and “may be
 8 detained through the completion of [his] removal proceedings without bond.” (*Id.* at 3.)
 9 (citing *Jennings v. Rodriguez*, 583 U.S. 281 (2018)). Respondents assert that Petitioner is
 10 an alien subject to the “entry fiction,” i.e. that Petitioner never actually “entered” the United
 11 States because he was detained upon presenting at the port of entry. (*See id.* at 4.)
 12 Respondents argue that Petitioner is not entitled to due process rights because of this “entry
 13 fiction.” (*See id.* at 5) (“Petitioner’s claim to procedural due process rights must fail
 14 because [he] is considered legally to have not entered the United States, even though [he]
 15 is physically present here.”).³ Finally, Respondents argue that “only Warden Eric Rokosky
 16 is a proper respondent.” (*Id.* at 1.)⁴

17 ² Petitioner initially named former U.S. DHS Secretary Kristi Noem; former Warden of the
 18 Eloy Detention Center Fred Figueroa; Field Office Director for ICE’s Enforcement and Removal
 19 Operations (“ERO”) Field Office John E Cantu; and Acting Director of Executive Office for
 20 Immigration Review Sirce E Owen as Respondents (*see* Doc. 1). Respondents Cantu and Owen
 were dismissed as improper Respondents pursuant to this Court’s Order on March 26, 2026. (*See*
 Doc. 4 at 2.) This Court also substituted Respondent Noem for Markwayne Mullin and Respondent
 Figueroa for Eric Rokosky. (*See id.*)

21 ³ Respondents repeatedly, erroneously refer to Petitioner as “she.” (*See* Doc. 9 at 5.) And
 22 although Respondents cite to Petitioner’s “release from custody on Section 1182(d)(5) parole” and
 23 “Section 1182(d)(5) parole determinations,” there is no record before this Court of Petitioner ever
 24 being released from custody on parole. (*See* Docs. 1, 9.) It therefore appears to undersigned as
 25 though Respondents failed to fully update their form Response to detention challenges based on
 this Petitioner’s circumstances. While undersigned recognizes Respondents’ counsel face a
 number of these types of petitions, the duty to adequately support their legal and factual assertions
 remains unchanged. *See* Fed. R. Civ. P. 11(b). Undersigned recommends no further action but
 Respondents’ counsel are reminded of their obligations.

26 ⁴ Respondents thus request that the Court dismiss all Respondents other than Warden
 27 Rokosky. (Doc. 9 at 2.) “[L]ongstanding practice confirms that in habeas challenges to present
 28 physical confinement-‘core challenges’-the default rule is that the proper respondent is the warden
 of the facility where the prisoner is being held, not the Attorney General or some other remote
 supervisory official.” *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). The Ninth Circuit further
 clarified this position and “affirm[ed] the application of the immediate custodian and district of
 confinement rules to core habeas petitions filed pursuant to 28 U.S.C. § 2241, including those filed
 by immigrant detainees.” *Doe v. Garland*, 109 F.4th 1188, 1199 (9th Cir. 2024). However, other

Petitioner filed a timely⁵ Reply with the Court arguing that he is required to be released on parole since he has been held without a court hearing for over six months. (Doc. 12 at 1.) Petitioner further argues that because he has no criminal record and poses no danger to society, he should be released from custody. (*Id.* at 2.) The Petition is now fully briefed and ripe for disposition.

II. ANALYSIS

“The writ of habeas corpus remains available to every individual detained within the United States.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (citing U.S. Const., Art. I, § 9, cl. 2). Writ of habeas corpus relief extends to a person in federal custody if the petitioner can demonstrate he “is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3). Accordingly, federal courts have jurisdiction to grant writs of habeas corpus to noncitizens who are being unlawfully detained under 28 U.S.C. § 2241. *See Trinidad y Garcia v. Thomas*, 683 F.3d 952, 956 (9th Cir. 2012) (“The writ of habeas corpus historically provides a remedy to non-citizens challenging executive detention.”) (citing *INS v. St. Cyr*, 533 U.S. 289, 301-303 (2001)); *Lopez-Marroquin v. Barr*, 955 F.3d 759, 759 (9th Cir. 2020) (“[D]istrict courts retain jurisdiction under 28 U.S.C. § 2241 to consider habeas challenges to immigration detention that are sufficiently independent of the merits of the removal order”) (citation omitted). Respondents do not dispute this Court’s jurisdiction over considering Petitioner’s prolonged detention. (*See* Doc. 9.)

courts in this Circuit have found that *Doe* “did not necessarily preclude naming more than one respondent so long as the immediate custodian is named.” *See, e.g., Doe v. Chestnut*, 810 F. Supp. 3d 1169, 1169 n.1 (E.D. Cal. 2025); *Gonzalez Elias v. Warden of the Golden State Annex Det. Facility*, No. 1:26-CV-01835-JLT-EPG, 2026 WL 901288, at *1 n.1 (E.D. Cal. Apr. 2, 2026). Because Petitioner names his immediate custodian, and this Court has already dismissed improper Respondents (*see* Doc. 4), undersigned declines to recommend dismissal of additional Respondents.

⁵ Under the mailbox rule, “[w]hen a prisoner gives prison authorities a habeas petition or other pleading to mail to court, the court deems the petition constructively ‘filed’ on the date it is signed.” *Roberts v. Marshall*, 627 F.3d 768, 770 n.1 (9th Cir. 2010) (citing *Huizar v. Carey*, 273 F.3d 1220, 1223 (9th Cir. 2001)); *see also Barrientos v. Lynch*, 829 F.3d 1064, 1066-1068 (9th Cir. 2016) (applying the mailbox rule to immigration detainees). Petitioner, as a pro se litigant in immigration detention, can thus be said to have timely filed his Reply on April 23, 2026, prior to the deadline for reply on April 27, 2026. (*See* Doc. 12 at 2); *see Campbell v. Henry*, 614 F.3d 1056, 1058-1059 (9th Cir. 2010).

1 Governing the detention of “applicants for admission” is 8 U.S.C. § 1225. The
2 statute defines “applicants for admission” as “an alien present in the United States who has
3 not been admitted” following inspection by immigration authorities. 8 U.S.C. § 1225. “As
4 relevant here, applicants for admission fall into one of two categories, those covered by §
5 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings*, 583 U.S. at 287. Section
6 1225(b)(1) applies to aliens initially determined to be inadmissible due to fraud,
7 misrepresentation, or lack of documentation, or “certain other aliens designated by the
8 Attorney General in his discretion.” *Id.* “Normally, noncitizens covered by § 1225(b)(1)
9 are subject to an expedited removal process that does not include a hearing before an IJ or
10 review of the removal order.” *See Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1111-1112
11 (W.D. Wash. 2019). If, however, a noncitizen indicates an intention to apply for asylum or
12 a fear of persecution, the inspecting immigration officer must refer the noncitizen for a
13 credible fear interview with an immigration officer. *See* 8 U.S.C. § 1225(b)(1)(A)(ii). “If
14 the officer determines . . . that an alien has a credible fear of persecution . . . the alien shall
15 be detained for further consideration of the application for asylum.” 8 U.S.C. §
16 1225(b)(1)(B)(ii). Section 1225(b)(2) is broader and “serves as a catchall provision that
17 applies to all applicants for admission not covered by § 1225(b)(1).” *Id.*

18 Respondents assert that Petitioner’s detention falls under § 1225(b)(2). (*See* Doc.
19 9.) However, the record indicates that Petitioner, as a noncitizen determined to have a
20 credible fear of persecution, is appropriately considered under 8 U.S.C. § 1225(b)(1)(B)(ii).
21 Pursuant to § 1225(b)(1)(B)(ii), a noncitizen “shall be detained for further consideration of
22 the application for asylum.” Respondents argue that “Petitioner is properly detained under
23 Section 1225(b)(2)(A), not Section 1226(a); Petitioner has no due process right to release.”
24 (Doc. 9 at 2). It appears Respondents essentially conclude that because Petitioner is an
25 arriving noncitizen, his detention is justified indefinitely. (*See id.*) Regardless of whether
26 Petitioner is detained pursuant to § 1225(b)(1)(B)(ii) or § 1225(b)(2), several District
27 Judges of this District have rejected indefinite detention under § 1225(b) without
28 undertaking a due process analysis. *See Avakian v. Cantu*, No. CV-26-00104-PHX-SHD,

2026 WL 746351, at *2 (D. Ariz. Mar. 17, 2026) (rejecting respondents’ reliance on § 1225(b) and *Jennings* without addressing any constitutional considerations); *see also Kaur v. Lyons*, No. CV-26-00217-PHX-KML (ASB), 2026 WL 967846, at *3-4 (D. Ariz. Mar. 24, 2026), *report and recommendation adopted*, 2026 WL 963792 (D. Ariz. Apr. 9, 2026) (adopting the recommendation that considered petitioner’s due process rights despite being detained pursuant to § 1225(b)(2)); *but see Mamedova v. Noem*, No. CV-25-04619, 2026 WL 1162282, at *2-3 (D. Ariz. Apr. 29, 2026) (concluding that “an arriving alien subject to statutorily mandated detention under §§ 1225(b)(1) or 1225(b)(2) does not have a constitutional right to a bond hearing.”). Accordingly, undersigned assumes the analysis does not end there and addresses Petitioner’s due process rights.

A. Entitlement to Due Process Claim

The Due Process Clause of the Fifth Amendment to the United States Constitution provides that “No person shall be . . . deprived of life, liberty, or property, without due process of law.” U.S. Const. Amend. V. “It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings.” *Reno v. Flores*, 507 U.S. 292, 306 (1993). Beginning with that fundamental principle, undersigned will now briefly address the ever-developing body of caselaw addressing the extent due process is available to immigrants detained pursuant to § 1225(b). *See Rodriguez v. Robbins* (“*Rodriguez III*”), 804 F.3d 1060, 1067 (9th Cir. 2015), *rev’d sub nom. Jennings v. Rodriguez*, 583 U.S. at 287 (“[I]n a series of decisions since 2001, the Supreme Court and [Ninth Circuit] have grappled in piece-meal fashion with whether the various immigration detention statutes may authorize indefinite or prolonged detention of detainees and, if so, may do so without providing a bond hearing.”)⁶

The Supreme Court addressed whether applicants for admission into the United States are afforded due process rights in *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103 (2020). In *Thuraissigiam*, the Supreme Court rejected an

⁶ *See Ibarra-Perez v. Howard*, 468 F. Supp. 3d 1156, 1173-1176 (D. Ariz. 2020) for a comprehensive discussion of the background law and series of cases decided by the Ninth Circuit and Supreme Court.

1 arriving noncitizen's due process rights, finding that "an alien in respondent's position has
2 only those rights regarding admission that Congress has provided by statute." *Id.* at 140. In
3 interpreting and applying *Thuraissigiam* to petitioners like Baghdasaryan, who challenge
4 *detention* rather than *admission*, district courts have taken essentially two different
5 approaches. *See Sadeqi v. LaRose*, 809 F. Supp. 3d 1090, 1093 (S.D. Cal. 2025) (outlining
6 the two ways district courts have applied *Thuraissigiam* to detention challenges).

7 Some district courts have denied or dismissed habeas petitions outright for
8 noncitizens challenging detention on due process grounds. *See, e.g., Chavez v. Noem*, ---
9 F.Supp.3d ---, No. CV-26-00323-PHX-MTL-JFM, 2026 WL 381618, at *3 (D. Ariz. Feb.
10 9, 2026) ("These procedures represent the due process as provided by Congress in statute.
11 Petitioner is entitled to nothing further under the Constitution.") (denying petitioner's §
12 2241 petition where petitioner "had been unlawfully present in the United States" since
13 2022); *Ibarra-Perez*, 468 F. Supp. 3d at 1177 (discussing the *Rodriquez* progeny and
14 finding under the current Ninth Circuit precedent "it is constitutionally permissible to
15 require Petitioner to remain in custody for the duration of his removal proceeding");
16 *Petgrave v. Aleman*, 529 F. Supp. 3d 665, 679 (S.D. Tex. 2021) ("As far as [p]etitioner is
17 concerned, whatever procedure Congress has authorized is sufficient due process.").

18 The majority of district courts in the Ninth Circuit have utilized a more "case-
19 specific," or "as-applied," approach to due process challenges from noncitizens disputing
20 their prolonged detention in habeas corpus matters. *See Banda*, 385 F. Supp. 3d at 1117
21 ("[T]he Court joins the vast majority of other district courts to conclude that unreasonably
22 prolonged detention under § 1225(b) without a bond hearing violates due process.");
23 *Gomez v. Doe*, No. CV 25-03255-PHX-JJT-CDB, 2025 WL 3269886, at *11 (D. Ariz.
24 Nov. 3, 2025) (holding that "[t]he Fifth Amendment's Due Process Clause extends to all
25 persons, regardless of status" and applying a balancing test to determine what procedural
26 safeguards apply to a noncitizen challenging his detention under § 1225(b)(2)(A) pursuant
27 to § 2241), *report and recommendation adopted sub nom. Gomez v. Unknown Party*, 2025
28 WL 3269055 (D. Ariz. Nov. 24, 2025); *Avakian v. Cantu*, 2026 WL 746351, at *2

1 (applying due process considerations to petitioner’s prolonged detention under § 1225(b));
2 *Cong v. Noem*, No. 25-CV-3730-GPC-DEB, 2026 WL 76566, at *3 (S.D. Cal. Jan. 9, 2026)
3 (“[M]ost courts have opted for an alternative, as-applied approach [in considering
4 *Thuraissigiam*].”) (collecting cases from the Ninth Circuit); *Sadeqi*, 809 F. Supp. 3d at
5 1093 (“This [c]ourt agrees with the majority position that a petitioner detained under
6 Section 1225(b)(1) may assert a due process challenge to prolonged mandatory detention
7 without a bond hearing.”) (recognizing the distinction in applying *Thuraissigiam* between
8 an arriving alien’s due process rights to *admission*, circumscribed in *Thuraissigiam*, rather
9 than limiting a petitioner’s ability to challenge their *detention*) (collecting cases).
10 Moreover, the Ninth Circuit expressed in the most recent *Rodriguez* decision, following
11 remand from the Supreme Court in *Jennings v. Rodriguez*⁷, that “[w]e have grave doubts
12 that any statute that allows for arbitrary prolonged detention without any process is
13 constitutional or that those who founded our democracy precisely to protect against the
14 government’s arbitrary deprivation of liberty would have thought so.” *Rodriguez v. Marin*,
15 909 F.3d 252, 256 (9th Cir. 2018).

16 Undersigned recommends that the Court join the majority of courts in this Circuit
17 in holding that a prolonged detention under § 1225(b) may eventually give rise to due
18 process issues. *See Cantu*, 2026 WL 746351, at *2 (rejecting respondents’ objections that
19 an arriving noncitizen may be detained through the completion of their removal
20 proceedings, finding that the Supreme Court did not reach the constitutional analysis in its
21 decision in *Jennings* and therefore did not preclude whether the denial of a bond hearing
22 under § 1225(b) could violate the Due Process Clause). However, undersigned recognizes
23 that there is the above-referenced split even within this District and ultimately, undersigned
24 defers to the assigned District Judge on the issue.

25 **A. *Banda* Test (Whether Petitioner’s Detention Has Become Unreasonable)**

26 Courts apply a multifactor test to determine whether § 1225(b) detention has
27 become unreasonable and therefore violative of due process. *See Banda*, 385 F. Supp. 3d

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7 583 U.S. at 281.

at 1118. While courts differ slightly on the test applied, they are substantively the same – balancing petitioner’s interest, government interest, and fault on either party. *See Baishymyrov v. Warden of Golden State Annex Det. Facility*, No. 1:25-CV-01658-DMC-HC, 2026 WL 145644, at *6-9 (E.D. Cal. Jan. 20, 2026) (applying the *Lopez*⁸ test to determining the reasonableness of a § 1225(b) detention); *Henriquez v. Garland*, No. 5:22-CV-00869-EJD, 2022 WL 2132919, at *5 (N.D. Cal. June 14, 2022) (applying the *Matthews v. Elridge*⁹ test to assess whether prolonged detention has violated due process in 8 U.S.C. § 1226(c) context); *Yacoub v. Scott*, No. 2:26-CV-00783-TL, 2026 WL 1107805, at *3 (W.D. Wash. Apr. 23, 2026) (applying the *Banda* test to assess prolonged detention of noncitizen detained pursuant to § 1225(b)(1)(B)(ii)). Undersigned will apply the *Banda* test based on recent Report and Recommendation adoptions to come out of this District, but similarly notes that “[u]nder either test, Petitioner is entitled to a bond hearing.” *See Avakian v. Rokosky*, No. CV-26-00104-PHX-SHD, slip op. at 21 (D. Ariz. Feb. 24, 2026), *report and recommendation adopted sub nom. Avakian v. Cantu*, 2026 WL 746351 (D. Ariz. Mar. 17, 2026); *see also Kaur*, 2026 WL 963792, at *1 (adopting the recommendation that applied *Banda* to assess petitioner’s due process rights). Under *Banda*, courts will balance the following factors: “(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.” 385 F. Supp. 3d at 1118 (quoting *Jamal v. Whitaker*, 358 F. Supp. 3d 853, 859 (D. Minn. 2019)).

⁸ “To determine whether § 1226(c) detention has become unreasonable, the Court will look to the total length of detention to date, the likely duration of future detention, and the delays in the removal proceedings caused by the petitioner and the government.” *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022).

⁹ “[O]ur prior decisions indicate that identification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Mathews v. Eldridge*, 424 U.S. 319, 334-335 (1976).

1 Regarding the first factor, total length of detention, Petitioner has been in ICE
2 detention since he arrived in the United States on November 22, 2024. (Doc. 1 at 4). Thus,
3 Petitioner has been detained for at least seventeen months as of the date of this Report and
4 Recommendation. (*See id.*) Federal courts have found that prolonged detention in a similar
5 (and shorter) range of time leans towards granting a bond hearing. *See Lopez*, 631 F. Supp.
6 3d at 879 (“Petitioner has been in immigration detention . . . approximately one year.
7 District courts have found shorter lengths of detention pursuant to § 1226(c) without a bond
8 hearing to be unreasonable.”); *Amado v. United States Dep’t of Just.*, No. 25-CV-2687-LL-
9 DDL, 2025 WL 3079052, at *5 (S.D. Cal. Nov. 4, 2025) (“Courts have found detention
10 over seven months without a bond hearing weighs toward a finding that it is
11 unreasonable.”); *Gonzalez v. Bonnar*, No. 18-CV-05321-JSC, 2019 WL 330906, at *3
12 (N.D. Cal. Jan. 25, 2019) (“As detention continues past a year, courts become extremely
13 wary of permitting continued custody absent a bond hearing.”) (internal citations omitted).
14 Accordingly, Petitioner’s over seventeen-month detention weighs towards granting a bond
15 hearing.

16 The second factor, likely duration of future detention, also weighs towards
17 Petitioner’s position. On September 8, 2025, an Immigration Judge denied Petitioner’s
18 asylum applications. (*See* Doc. 9 at 1.) Petitioner appealed that decision on October 5,
19 2025, and that appeal is pending before the BIA. (*See* Doc. 1 at 4.) Courts have found that
20 pending administrative and possible Ninth Circuit appeals can be “sufficiently lengthy”
21 such that it favors Petitioner’s ability to be heard. *See Abdul-Samed v. Warden of Golden*
22 *State Annex Det. Facility*, No. 1:25-CV-00098-SAB-HC, 2025 WL 2099343, at *7 (E.D.
23 Cal. July 25, 2025) (citing *German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d
24 203, 211 (3d Cir. 2020)); *see also Banda*, 385 F. Supp. 3d at 1119 (“Petitioner only recently
25 filed his appeal of the IJ’s removal order with the BIA. If the BIA affirms, petitioner will
26 have the opportunity to seek review in the Ninth Circuit. This process may take up to two
27 years or longer.”) (citing *Jamal*, 358 F. Supp. 3d 853, at 859); *see also Arechiga v.*
28 *Archambeault*, No. 2:23-CV-00600-CDS-VCF, 2023 WL 5207589, at *4 (D. Nev. Aug.

1 11, 2023) (“It is anyone’s guess how long it will take the BIA to reconsider [the] petition .
2 . . or how long subsequent appeals of that decision might take.”) Based on the record before
3 this Court, it appears that Petitioner could face many more months or years of pending
4 appeals. *See Banda*, 385 F. Supp. 3d at 1119. Accordingly, the potential length of detention
5 during Petitioner’s administrative and possible Ninth Circuit appeals process weighs
6 towards granting Petitioner a bond hearing.

7 In the third factor, the Court considers the conditions of detention where the
8 petitioner is detained. “The more that the conditions under which the noncitizen is being
9 held resemble penal confinement, the stronger his argument that he is entitled to a bond
10 hearing.” *Banda*, 385 F. Supp. 3d at 1119 (quoting *Jamal*, 358 F. Supp. 3d at 860). Here,
11 the parties agree Petitioner is confined at the Eloy Detention Center in Arizona. (*See Docs.*
12 1, 9.) This Court has previously recognized that Eloy Detention Center is a CoreCivic
13 immigration detention facility “opened in 1994 and . . . designed to imprison people in
14 criminal custody.” *See Rosado v. Figueroa*, No. CV 25-02157-PHX-DLR (CDB), 2025
15 WL 2337099, at *13 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, 2025
16 WL 2349133 (D. Ariz. Aug. 13, 2025). The facility “has since evolved into an ICE
17 detention facility.” *Id.* (finding that the conditions of Eloy Detention Center favored
18 Petitioner’s private interest to liberty and that courts consider “whether a detainee is held
19 in conditions indistinguishable from criminal incarceration.”) Petitioner’s form Petition
20 contains no description of Petitioner’s specific hardships faced or other conditions at Eloy
21 Detention Center. (*See Doc. 1*). The Petition does allege that “[c]ivil immigration detention
22 is not punishment, but [Petitioner has] been confined for a prolonged period without the
23 basic safeguard of a neutral custody hearing.” (*Id.* at 5.) While the Petition lacks specific
24 descriptors on the conditions he faces at Eloy Detention Center, this Court’s prior finding
25 that Eloy “was designed to imprison people” and that the conditions were
26 “indistinguishable from criminal incarceration” favor granting a bond hearing. *See Rosado*,
27 2025 WL 2337099, at *13.

28 In the fourth and fifth factors, the Court considers delays in the removal proceedings

1 caused by the detainee or the government. Here, the factors are likely neutral as applied to
2 Petitioner, because there is no evidence in the record that either Petitioner or Respondents
3 have caused any delay in the removal proceedings. (*See* Docs. 1, 9.)

4 Under the sixth factor, the Court looks at the likelihood that the removal proceedings
5 will result in a final order of removal. Undersigned finds this factor is also neutral. *See*
6 *Banda*, 385 F. Supp. 3d at 1118. While this Court cannot presume what the BIA or Ninth
7 Circuit may decide on Petitioner's asylum claim, the record before this Court appears to
8 indicate Petitioner has at least a viable case to plead. (*See* Doc. 9-1 at 9) (Petitioner's
9 credible fear interview where the officer found Petitioner credible and that Petitioner had
10 established a "credible fear of persecution"); (*see also* Doc. 9-1 at 13-27) (Petitioner's
11 testimony regarding his past harm in Armenia and well-founded fear of returning).

12 Undersigned finally makes note of similarly situated petitioners. Based on the
13 record before this Court, Petitioner arrived at the United States Port of Entry in Otay Mesa,
14 California and immediately surrendered himself to border officials. (*See* Doc. 9-1 at 15.)
15 When asked why Petitioner did not wait to enter the United States when the suspension
16 and limitation on entry was not in effect, Petitioner explained that he "registered with the
17 CBP but [he] couldn't wait anymore, so [he] decided to enter earlier." (*Id.* at 19.) In similar
18 scenarios, courts appear to take into consideration when petitioners enter the United States
19 as an "arriving" noncitizen consistently claiming asylum when determining whether to
20 grant a bond hearing. *See Avakian v. Rokosky*, slip op. at 18 ("Logically, if due process
21 affords criminal aliens under orders of removal a bond hearing if their detention becomes
22 'unreasonable,' notwithstanding that their detention is mandatory, then non-criminal aliens
23 should also be afforded this due process protection."); *see also Sufiiarov v. Warden, Otay*
24 *Mesa Det. Ctr.*, No. 25-CV-3265-LL-DDL, 2026 WL 26079, at *1, 5 (S.D. Cal. Jan. 5,
25 2026) (granting bond hearing to petitioner who arrived to the United States through an
26 appointment seeking asylum); *Sadeqi*, 809 F. Supp. 3d at 1093 (granting bond hearing to
27 petitioner who arrived to the United States via port of entry and immediately claimed
28 asylum); *c.f. Chavez v. Noem*, 2026 WL 381618, at *3 ("[A] person who entered the United

States illegally and is clearly and beyond a doubt not entitled to admission, is subject to mandatory detention”) (denying a bond hearing for petitioner detained pursuant to § 1225(b)(2)(A) in part because they had been “unlawfully present in the United States” for almost three years prior to detention).

With three factors weighing in Petitioner’s favor and three factors neutral, undersigned recommends that the District Judge find that Petitioner’s continued detention has become unreasonable and due process requires that Petitioner be provided with a bond hearing. *See Rodriguez v. Marin*, 909 F.3d at 256 (expressing “grave doubts” that prolonged detention could not raise constitutional concerns).

B. *Bautista*¹⁰ applicability

Undersigned recognizes that this Court has in the past considered 8 U.S.C. § 1225(b) detention and bond eligibility pursuant to the Central District of California’s decision in *Bautista* and its progeny. *See, e.g., Vargas v. Credio*, No. 26-CV-02274-PHX-SPL (JZB), slip op. at 1-2 (D. Ariz. Apr. 8, 2026). In *Bautista*, the Central District of California declared the Bond Eligible Class members not subject to mandatory detention under § 1225(b)(2). *Bautista*, 2025 WL 3678485, at *1. Bond Eligible Class members are defined as:

All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination.

Bautista v. Santacruz, 813 F. Supp. 3d 1075, 1077-1078 (C.D. Cal. 2025). While the Ninth Circuit stayed the district court’s class certification and final judgment “insofar as they extend beyond the Central District of California,” *see Bautista v. U.S. Dep’t of Homeland Sec.*, No. 25-7958 (9th Cir. Mar. 31, 2026), this Court has recognized that “the stay did not alter the impact of the declaratory judgment within the Central District of California, nor does it affect the Court’s independent determination that Petitioner is entitled to relief in

¹⁰ *Bautista v. Noem*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3678485, at *1 (C.D. Cal. Dec. 18, 2025).

1 the form of release or a bond hearing.” *See Vargas*, slip op. at 1-2. However, in the instant
2 case it appears Petitioner would not be a member of the bond-eligible class as a §
3 1225(b)(1)(A)(ii) noncitizen detainee. Accordingly, should the Court disagree with the
4 above due process analysis, Petitioner does not appear to be eligible for bond on *Bautista*
5 grounds.

6 **III. CONCLUSION AND REMEDY**

7 Based on the above, undersigned recommends this Court grant Petitioner’s request
8 for a bond hearing. In addition to a bond hearing, Petitioner requests immediate release
9 from detention. (*See* Doc. 1.) Courts in this Circuit have found in situations similar to
10 Petitioner’s that a bond hearing, rather than immediate release, is the appropriate remedy.
11 *See Lopez*, 631 F. Supp. 3d at 882-883 (“The [c]ourt finds, consistent with other post-
12 *Jennings* cases, that the appropriate remedy is a bond hearing before an immigration judge
13 rather than immediate release.”) (collecting cases). Thus, undersigned recommends the
14 Petition (Doc. 1) be granted in part (insofar as a bond hearing is granted) and denied in part
15 (denying other requested relief).

16 **RECOMMENDATION**

17 Based on the foregoing,

18 **IT IS THEREFORE RECOMMENDED** that the Petition for a Writ of Habeas
19 Corpus Under to 28 U.S.C. § 2241 (Immigration detention) (Doc. 1) be **granted in part**
20 **and denied in part** as follows:

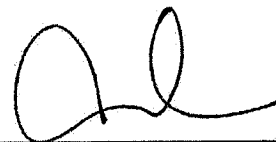
- 21 1. Undersigned recommends that the Court **grant** Petitioner’s request for a bond
22 hearing and order that, within **thirty (30) days** of the date his Petition being
23 granted, Petitioner be afforded a bond hearing before a neutral adjudicator at
24 which hearing the government must bear the burden of showing that Petitioner
25 should not be released on bond because he is a flight risk or a danger to the
26 community; and
- 27 2. It is recommended all other forms of relief in the Petition, including an order
28 directing Petitioner’s immediate release, be **denied**.

EFFECT OF RECOMMENDATION

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment. The parties shall have 14 days from the date of service of a copy of this recommendation within which to file specific written objections with the Court. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 6(b) and 72. Thereafter, the parties have 14 days within which to file a response to the objections.

Failure to timely file objections to the Magistrate Judge's Report and Recommendation may result in the acceptance of the Report and Recommendation by the district court without further review. *See United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). Failure to timely file objections to any factual determinations of the Magistrate Judge will be considered a waiver of a party's right to appellate review of the findings of fact in an order of judgment entered pursuant to the Magistrate Judge's recommendation. *See* Fed. R. Civ. P. 72.

Dated this 4th day of May, 2026.



Honorable Alison S. Bachus
United States Magistrate Judge