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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

AILAN LI,

Petitioner,

v.

CHRISTOPHER LAROSE, et al.,

Respondents.

Case No.: 26-cv-2073 JLS DEB

RESPONSE TO PETITION

I. INTRODUCTION

Petitioner is an arriving alien and applicant for admission who is subject to mandatory detention under 8 U.S.C. § 1225(b)(2). Likewise, the duration of her detention has not become unconstitutionally prolonged, and the Court should deny her requests for relief accordingly.

II. FACTUAL BACKGROUND

Petitioner is a native and citizen of the People's Republic of China who entered the United States without inspection while concealed in the trunk of a vehicle that passed through the San Ysidro Port of Entry on July 8, 2025. *See* Form I-213, attached as *Exhibit 1*. Shortly thereafter, Petitioner was apprehended by CBP agents who determined she did not have legal documents allowing her to enter or remain in the United States. *Id.* As such, she was determined to be inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I), was issued a Notice and Order of Expedited Removal, and was

taken into ICE custody pursuant to 8 U.S.C. § 1225(b)(1)(B). *Id.*

Petitioner subsequently applied for asylum and related relief, and an asylum officer found she demonstrated a credible fear of persecution or torture. Thus, the Notice and Order of Expedited Removal was *not* executed and on September 15, 2025, Petitioner was issued a Notice to Appear which initiated removal proceedings under 8 U.S.C. § 1229. In those proceedings, which are ongoing, Petitioner will have the opportunity to fully adjudicate her claims for relief from removal (including her claims for asylum and related relief). Her case is proceeding in an ordinary and timely manner with an individual merits hearing scheduled for April 21, 2026. *See* Notice of In-Person Hearing, attached as *Exhibit 2*. As such, there is no administratively final order of removal and Petitioner remains mandatorily detained under 8 U.S.C. § 1225(b)(2)(A).

III. PETITIONER IS LAWFULLY DETAINED UNDER THE INA AND THE CONSTITUTION

a. Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(1)

An "applicant for admission," which 8 U.S.C. § 1225(a) defines as "[a]n alien present in the United States who has not been admitted or who arrives in the United States," is subject to the detention framework set forth in 8 U.S.C. § 1225. That provision provides for mandatory detention, "pending a final determination of credible fear and persecution[.]" The United States Supreme Court has explained, "applicants for admission fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Section 1225(b)(1) applies to those, like Petitioner, "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation[.]" *Id.* at 281. Once it is determined that the alien has a credible fear of persecution, as was determined here, then "the alien *shall be detained* for further consideration of the application for asylum." 8 U.S.C. § 1225(b)(1)(B)(ii) (emphasis added).

Petitioner is an arriving alien. As discussed above, arriving aliens are applicants for admission who are subject to expedited removal proceedings unless—as occurred here—it has been determined that they have a credible fear of persecution. 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, her detention is mandated by section 1225(b) until the conclusion of her 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 her released from ICE custody. But the Supreme Court has rejected such contention, explaining: "Read most naturally, §§ 1225(b)(1) and (b)(2) . . . mandate detention of applicants for admission until certain proceedings have concluded . . . Until that point, however, 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 reasons or significant public benefit" under 8 U.S.C. § 1182(d)(5), "there are no *other* circumstances under which aliens detained under § 1225(b) may be released." *Id.* at 300 (emphasis in original). Petitioner's detention is *mandated* under section 1225(b)(1)(B) and her petition must be denied accordingly.

b. Petitioner's detention is not unconstitutionally prolonged

In *Jennings*, the Supreme Court evaluated the proper interpretation of 8 U.S.C. § 1225(b) and stated, "[r]ead most naturally, [8 U.S.C.] §§ 1225(b)(1) and (b)(2) . . . mandate detention of applicants for admission until certain proceedings have concluded." 583 U.S. 281 at 297. Neither 8 U.S.C. § 1225(b)(1) nor § 1225(b)(2)

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

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

In *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 138–40 (2020), the Supreme Court once again addressed the due process rights of individuals like Petitioner—inadmissible arriving noncitizens seeking initial entry into the United States. The Supreme Court stated that such individuals have no due process rights "other than those afforded by statute." *Id.* at 107; *see also id.* at 140 ("[A]n alien in respondent's position has only those rights regarding admission that Congress has provided by statute."). The Supreme Court noted that its determination was supported by "more than a century of precedent." *Id.* at 138 (citing *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892); *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950); *Mezei*, 345 U.S. at 212; *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)). Because the only process due to Petitioner is that afforded under section 1225(b), the Court must

reject her claim that her detention violates the Fifth Amendment's Due Process Clause and deny her requested relief. *See Thuraissigiam*, 591 U.S. at 138–40; *Mendoza-Linares*, 51 F.4th at 1167; *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) ("The recognized liberty interests of U.S. citizens and aliens are not coextensive: the Supreme Court has 'firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens.'") (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)); *Zelaya-Gonzalez*, 2023 WL 3103811, at *4 ("Binding Ninth Circuit and Supreme Court precedents are clear that Petitioner lacks any rights beyond those conferred by statute, and no statute entitles Petitioner to a bond hearing.").

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

Even if the Court infers a constitutional right against prolonged mandatory detention, Petitioner's claim still fails. "In general, as detention continues past a year, courts become extremely wary of permitting continued custody absent a bond hearing." *Sibomana v. LaRose*, No. 22-cv-933-LL-NLS, 2023 WL 3028093, at *4 (S.D. Cal. April 20, 2023) (citation omitted); *see also Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS, 2024 WL 711607, at *5 (S.D. Cal. Feb. 21, 2024) (detained over two-and-a-half

years); *Sanchez-Rivera v. Matuszewski*, No. 22-cv-1357-MMA (JLB), 2023 WL 139801, at *6 (S.D. Cal. Jan. 9, 2023) (three years); *Yagao v. Figueroa*, No. 17-cv-2224-AJB-MDD, 2019 WL 1429582, at *2 (S.D. Cal. March 29, 2019) (two years). Petitioner's detention falls significantly short of the length courts have found to raise due process concerns.

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

First, Petitioner has been detained for approximately nine months (since July 8, 2025). Courts in this district have found detention for *much longer* periods to be unreasonably prolonged, but Petitioner's current detention is not unreasonable by any standard. *See Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS, 2024 WL 711607 at *5 (S.D. Cal. Feb. 21, 2024) (32 months); *Sibomana*, 2023 WL 3028093, at *4 (19 months); *Sanchez-Rivera*, 2023 WL 139801 at *6 (three years); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 773 (S.D. Cal. 2020) (27 months); *Yagao*, 2019 WL 1429582, at *1 (42 months). Second, the likely duration of future detention weighs against Petitioner because her final merits hearing is scheduled for April 21, 2026. *See Exhibit 2*. And

third, there is no indication that the government has caused any delay in the removal proceedings.

Accordingly, Petitioner is subject to mandatory detention, which does not violate due process. *See Markov v. LaRose*, No. 25-CV-3811 JLS (SBC), 2026 WL 92069 (S.D. Cal. Jan. 13, 2026) ("Petitioner's length of detention, without more, does not render his detention unreasonable."); *Duran Romero v. LaRose*, No. 25-cv-3567-AGS-VET, ECF No. 7 (S.D. Cal. Jan. 14, 2026); *Shahin v. Noem*, No. 25-cv-2496-AGS-KSC, ECF No. 12 (S.D. Cal. Dec. 23, 2025); *Cordova Cordova*, No. 25-cv-2426-BAS-DDL, ECF No. 9 (S.D. Cal. Nov. 14, 2025); *Mendez Ramirez*, 612 F. Supp. 3d at 221; *Gonzalez Aguilar v. Wolf*, 448 F. Supp. 3d at 1212; *de la Rosa Espinoza*, 2020 WL 3452967, at *6-8.

IV. CONCLUSION

For the reasons stated herein, Respondents respectfully request that the Court dismiss this petition.

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Respectfully submitted,

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