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10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12
13 KAIYUAN CHEN,

14 Petitioner,

15 v.

16
17 U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT,

18 Respondent.
19
20

Case No.: 26-cv-02157-TWR-AHG

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

21
22 **I. INTRODUCTION**

23 Petitioner requests that the Court order his release from Immigration and
24 Customs Enforcement (ICE) custody. However, as an applicant for admission to the
25 United States, Petitioner's detention is mandated by 8 U.S.C. § 1225(b)(1)(B)(ii) until
26 the conclusion of his removal proceedings. Accordingly, the Court should deny
27 Petitioner's request for relief.

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1 **II. FACTUAL AND PROCEDURAL BACKGROUND**

2 Petitioner is a native and citizen of China, who entered the United States without
3 inspection near Otay Mesa, California, on July 1, 2025. *See* ECF No. 1 at 9. Petitioner
4 did not then have any valid entry documents to enter the United States. He was
5 determined to be inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I), placed in expedited
6 removal proceedings pursuant to 8 U.S.C. § 1225(b)(1), and taken into Immigration and
7 Customs Enforcement (ICE) custody pursuant to 8 U.S.C. § 1225(b)(1)(B). *Id* at 9, 16.
8 On August 1, 2025, he was granted parole for [REDACTED] *Id*
9 at 10. Petitioner was re-detained by ICE on September 16, 2025, when his parole
10 expired. *Id*. Petitioner was then interviewed by an asylum officer, pursuant to 8 U.S.C.
11 § 1225(b)(1)(B), but failed to receive a positive credible fear determination.¹

12 On November 28, 2025, Petitioner filed his Application for Asylum. *See* ECF
13 No. 1 at 7. Petitioner’s initial removal hearing was to take place on April 9, 2026.
14 However, Petitioner’s immigration counsel requested a continuance based on the instant
15 petition. On April 23, 2026, Petitioner’s hearing took place, however it was not
16 completed. The immigration judge continued the hearing to hear further testimony.
17 Petitioner’s removal hearing is currently set for May 6, 2026. Accordingly, Petitioner’s
18 removal proceedings remain pending and as a result, there is no administratively final
19 order of removal at this time. Petitioner remains mandatorily detained under 8 U.S.C. §
20 1225(b)(1)(B).

21 **III. STATUTORY BACKGROUND**

22 Section 235 of the Immigration and Nationality Act (INA), codified at 8 U.S.C.
23 § 1225, applies to an “applicant for admission,” defined as an “alien present in the
24 United States who has not been admitted” or “who arrives in the United States.” 8
25 U.S.C. § 1225(a)(1). “[A]pplicants for admission fall into one of two categories, those
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28 ¹ Supplemental information was obtained from ICE counsel.

1 covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings v. Rodriguez*,
2 583 U.S. 281, 287 (2018).

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

15 IV. ARGUMENT

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

17 Petitioner’s detention is statutorily mandated under 8 U.S.C. § 1225(b)(1)(B)(ii)
18 and has not been unconstitutionally prolonged. Accordingly, the Court must deny his
19 habeas petition.

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

21 Petitioner’s claim fails because he is subject to mandatory detention under 8
22 U.S.C. § 1225(b)(1). Under 8 U.S.C. § 1225(a)(1), an “applicant for admission” is
23 defined as an “alien present in the United States who has not been admitted or who
24 arrives in the United States.” As explained above, applicants for admission “fall into
25 one of two categories, those covered by § 1225(b)(1) and those covered by §
26 1225(b)(2).” *Jennings*, 583 U.S. at 287. Section 1225(b)(1) – the provision relevant
27 here – applies because Petitioner was found in the United States without proper
28 documents authorizing his presence. And that statute mandates detention when an

1 immigration officer determines that the alien has a credible fear of persecution. *See* 8
2 U.S.C. § 1225(b)(1)(B)(ii) (“If the officer determines at the time of the interview that
3 [the] alien has a credible fear of persecution . . . , the alien *shall be detained* for further
4 consideration of the application for asylum.”) (emphasis added); *see also Matter of M-*
5 *S*, 27 I. & N. Dec. 509, 519 (AG 2019) (“all aliens transferred from expedited to full
6 [removal] proceedings after establishing a credible fear are ineligible for bond”).

7 Petitioner requests that the Court order him released from ICE custody. But the
8 Supreme Court has rejected such contention, explaining: “Read most naturally,
9 §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until
10 certain proceedings have concluded. . . . Nothing in the statutory text imposes any limit
11 on the length of detention. And neither § 1225(b)(1) nor § 1225(b)(2) says anything
12 whatsoever about bond hearings.” *Jennings*, 583 U.S. at 297. Except for temporary
13 parole granted at the discretion of the Attorney General “for urgent humanitarian
14 reasons or significant public benefit” under 8 U.S.C. § 1182(d)(5), “there are no *other*
15 circumstances under which aliens detained under § 1225(b) may be released.” *Id.* at 300
16 (emphasis in original).

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

25 **2. Petitioner’s detention is not unconstitutionally prolonged.**

26 In *Jennings*, the Supreme Court evaluated the proper interpretation of 8 U.S.C.
27 § 1225(b). The Supreme Court stated that, “[r]ead most naturally, [8 U.S.C.]
28 §§ 1225(b)(1) and (b)(2) . . . mandate detention of applicants for admission until certain

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

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

19 In *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 138–40
20 (2020), the Supreme Court once again addressed the due process rights of inadmissible
21 arriving noncitizens seeking initial entry into the United States. The Supreme Court
22 stated that such individuals have no due process rights “other than those afforded by
23 statute.” *Id.* at 107; *see also id.* at 140 (“[A]n alien in respondent’s position has only
24 those rights regarding admission that Congress has provided by statute.”). The
25 Supreme Court noted that its determination was supported by “more than a century of
26 precedent.” *Id.* at 138 (citing *Nishimura Ekiu v. United States*, 142 U.S. 651, 660
27 (1892); *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950); *Mezei*, 345 U.S.
28 at 212; *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)). Because the only process due

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

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

24 Even if the Court infers a constitutional right against prolonged mandatory
25 detention, Petitioner’s claim still fails. “In general, as detention continues past a year,
26 courts become extremely wary of permitting continued custody absent a bond hearing.”
27 *Sibomana v. LaRose*, No. 22-cv-933-LL-NLS, 2023 WL 3028093, at *4 (S.D. Cal.
28 April 20, 2023) (citation omitted); *see also Durand v. Allen*, No. 3:23-cv-00279-RBM-

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

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

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

21 First, Petitioner has been detained for approximately ten months. Courts in this
22 district have found detention for much longer periods to be unreasonably prolonged.
23 *See Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS, 2024 WL 711607 at *5 (S.D. Cal.
24 Feb. 21, 2024) (32 months); *Sibomana*, 2023 WL 3028093, at *4 (19 months);
25 *Sanchez-Rivera*, 2023 WL 139801 at *6 (three years); *Kydyrali v. Wolf*, 499 F. Supp.
26 3d 768, 773 (S.D. Cal. 2020) (27 months); *Yagao*, 2019 WL 1429582, at *1 (42
27 months). The length of detention “is the most important factor.” *Sanchez-Rivera*, 2023
28 WL 139801, at *6 (citation omitted). And Petitioner’s current detention does not fall

1 within the range those courts have found to be unreasonable. Moreover, the length of
2 Petitioner’s detention, by itself, does not favor granting habeas relief. *See Sadeqi v.*
3 *LaRose*, No. 25-cv-2587-RSH-BJW, 2025 WL 3154520, at *3 (S.D. Cal. Nov. 12,
4 2025) (“The Court agrees with Respondents that the length of Petitioner’s detention to
5 date—almost 12 months—does not by itself, without more, establish prolonged
6 detention in violation of due process.”). Not only does the length of Petitioner’s
7 detention fall comparatively short of the length courts in this district have found to
8 warrant habeas relief, but the other *Lopez* factors do not favor habeas relief either.
9 Second, the likely duration of future detention weighs against Petitioner. Petitioner is
10 currently undergoing his removal proceedings. His individual merits hearing started on
11 April 23, 2026, and will continue again on May 6, 2026, so that the immigration judge
12 may hear further testimony. At that time, Petitioner’s path to release or removal should
13 be clear.

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

17 Accordingly, Petitioner is subject to mandatory detention, which does not violate
18 due process. *See Markov v. LaRose*, No. 25-CV-3811 JLS (SBC), 2026 WL 92069 (S.D.
19 Cal. Jan. 13, 2026) (“Petitioner’s length of detention, without more, does not render his
20 detention unreasonable.”); *Duran Romero v. LaRose*, No. 25-cv-3567-AGS-VET, ECF
21 No. 7 (S.D. Cal. Jan. 14, 2026); *Shahin v. Noem*, No. 25-cv-2496-AGS-KSC, ECF No.
22 12 (S.D. Cal. Dec. 23, 2025); *Cordova Cordova*, No. 25-cv-2426-BAS-DDL, ECF No.
23 9 (S.D. Cal. Nov. 14, 2025); *Mendez Ramirez*, 612 F. Supp. 3d at 221; *Gonzalez Aguilar*
24 *v. Wolf*, 448 F. Supp. 3d at 1212; *de la Rosa Espinoza*, 2020 WL 3452967, at *6-8.

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V. CONCLUSION

For the reasons stated herein, Respondent respectfully requests that the Court deny this petition.

Dated: April 27, 2026

Respectfully submitted,

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