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9
10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12
13 KAIYUAN CHEN,

14 Petitioner,

15 v.

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17 U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT,

18 Respondent.
19
20

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

**SUPPLEMENTAL RETURN TO
PETITION FOR WRIT OF HABEAS
CORPUS**¹

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

27 _____
28 ¹ Respondent submits this supplemental briefing pursuant to the Court's April 27, 2026
order. See ECF No. 9.

1 the conclusion of his removal proceedings. Accordingly, the Court should deny
2 Petitioner's request for relief.

3 II. FACTUAL AND PROCEDURAL BACKGROUND

4 Petitioner is a native and citizen of China, who entered the United States without
5 inspection near Otay Mesa, California, on July 1, 2025. *See* ECF No. 1 at 9. Petitioner
6 did not then have any valid entry documents to enter the United States. He was
7 determined to be inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I), placed in expedited
8 removal proceedings pursuant to 8 U.S.C. § 1225(b)(1), and taken into Immigration and
9 Customs Enforcement (ICE) custody pursuant to 8 U.S.C. § 1225(b)(1)(B). *Id* at 9, 16.
10 On August 1, 2025, he was granted parole for ~~_____~~ *Id*
11 at 10. Petitioner was re-detained by ICE on September 16, 2025, when his parole
12 expired. *Id*. Petitioner was then interviewed by an asylum officer, pursuant to 8 U.S.C.
13 § 1225(b)(1)(B), but failed to receive a positive credible fear determination.²

14 On November 28, 2025, Petitioner filed his Application for Asylum. *See* ECF
15 No. 1 at 7. Petitioner's initial removal hearing was to take place on April 9, 2026.
16 However, Petitioner's immigration counsel requested a continuance based on the instant
17 petition. On April 23, 2026, Petitioner's hearing took place, however it was not
18 completed. The immigration judge continued the hearing to hear further testimony.
19 Petitioner's removal hearing is currently set for May 6, 2026. Accordingly, Petitioner's
20 removal proceedings remain pending and as a result, there is no administratively final
21 order of removal at this time. Petitioner remains mandatorily detained under 8 U.S.C. §
22 1225(b)(1)(B).

23 III. STATUTORY BACKGROUND

24 Section 235 of the Immigration and Nationality Act (INA), codified at 8 U.S.C.
25 § 1225, applies to an "applicant for admission," defined as an "alien present in the
26 United States who has not been admitted" or "who arrives in the United States." 8

27
28 ² Supplemental information was obtained from ICE counsel.

1 U.S.C. § 1225(a)(1). “[A]pplicants for admission fall into one of two categories, those
2 covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings v. Rodriguez*,
3 583 U.S. 281, 287 (2018).

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

16 IV. ARGUMENT

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

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

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

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

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

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

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

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

27 In *Jennings*, the Supreme Court evaluated the proper interpretation of 8 U.S.C.
28 § 1225(b). The Supreme Court stated that, “[r]ead most naturally, [8 U.S.C.]

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

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

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

1 at 212; *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)). Because the only process due
2 Petitioner is that afforded under section 1225(b), the Court must reject his claim that
3 his detention violates the Fifth Amendment’s Due Process Clause and deny his
4 requested relief. See *Thuraissigiam*, 591 U.S. at 138–40; *Mendoza-Linares*, 51 F.4th at
5 1167; *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (“The
6 recognized liberty interests of U.S. citizens and aliens are not coextensive: the Supreme
7 Court has ‘firmly and repeatedly endorsed the proposition that Congress may make
8 rules as to aliens that would be unacceptable if applied to citizens.’”) (quoting *Demore*
9 *v. Kim*, 538 U.S. 510, 522 (2003)); *Zelaya-Gonzalez*, 2023 WL 3103811, at *4
10 (“Binding Ninth Circuit and Supreme Court precedents are clear that Petitioner lacks
11 any rights beyond those conferred by statute, and no statute entitles Petitioner to a bond
12 hearing.”).

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

25 Even if the Court infers a constitutional right against prolonged mandatory
26 detention, Petitioner’s claim still fails. “In general, as detention continues past a year,
27 courts become extremely wary of permitting continued custody absent a bond hearing.”
28 *Sibomana v. LaRose*, No. 22-cv-933-LL-NLS, 2023 WL 3028093, at *4 (S.D. Cal.

1 April 20, 2023) (citation omitted); *see also Durand v. Allen*, No. 3:23-cv-00279-RBM-
2 BGS, 2024 WL 711607, at *5 (S.D. Cal. Feb. 21, 2024) (detained over two-and-a-half
3 years); *Sanchez-Rivera v. Matuszewski*, No. 22-cv-1357-MMA (JLB), 2023 WL
4 139801, at *6 (S.D. Cal. Jan. 9, 2023) (three years); *Yagao v. Figueroa*,
5 No. 17-cv-2224-AJB-MDD, 2019 WL 1429582, at *2 (S.D. Cal. March 29, 2019) (two
6 years). Petitioner’s detention falls short of the length courts have found to raise due
7 process concerns.

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

21 Other Courts have applied the test in *Banda v. McAleenan*, which considers: (1)
22 the total length of detention to date; (2) the likely duration of future detention; (3)
23 conditions of detention; (4) delays in the removal proceedings caused by the detainee;
24 (5) delays in the removal proceedings caused by the government; and (6) the likelihood
25 that the removal proceedings will result in a final order of removal. *See* 385 F. Supp. 3d
26 1099, 1106 (W.D. Wash. 2019).

27 First, Petitioner has been detained for approximately ten months. Courts in this
28 district have found detention for much longer periods to be unreasonably prolonged.

1 See *Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS, 2024 WL 711607 at *5 (S.D. Cal.
2 Feb. 21, 2024) (32 months); *Sibomana*, 2023 WL 3028093, at *4 (19 months);
3 *Sanchez-Rivera*, 2023 WL 139801 at *6 (three years); *Kydyrali v. Wolf*, 499 F. Supp.
4 3d 768, 773 (S.D. Cal. 2020) (27 months); *Yagao*, 2019 WL 1429582, at *1 (42
5 months). The length of detention “is the most important factor.” *Sanchez-Rivera*, 2023
6 WL 139801, at *6 (citation omitted). Petitioner’s current detention does not fall within
7 the range those courts have found to be unreasonable. Moreover, the length of
8 Petitioner’s detention, by itself, does not favor granting habeas relief. See *Sadeqi v.*
9 *LaRose*, No. 25-cv-2587-RSH-BJW, 2025 WL 3154520, at *3 (S.D. Cal. Nov. 12,
10 2025) (“The Court agrees with Respondents that the length of Petitioner’s detention to
11 date—almost 12 months—does not by itself, without more, establish prolonged
12 detention in violation of due process.”). Second, the likely duration of future detention
13 weighs against Petitioner. Petitioner is currently undergoing his removal proceedings,
14 which began April 9, 2026. Third, Petitioner has not raised any claims regarding the
15 conditions of his confinement, thus, this factor weighs in favor of Respondent. As to
16 the next two factors, Petitioner and Respondent similarly delayed Petitioner’s removal
17 hearings. Petitioner requested a continuance on April 9, 2026, and on April 23, 2026,
18 the immigration judge continued the hearing to May 6, 2026, to hear further testimony.
19 As such, the path to Petitioner’s release or removal should be clear at the May 6, 2026
20 hearing, as will the likelihood of whether the removal proceedings will result in a final
21 order of removal. Accordingly, the last two factors are neutral at this stage.

22 Balancing the above factors, the record does not support a finding that “detention
23 has become so unreasonable as to require an initial bond hearing,” *Sanchez-Rivera*,
24 2023 WL 139801, at *6, or an order requiring Petitioner’s release.

25 Accordingly, Petitioner is subject to mandatory detention, which does not violate
26 due process. See *Markov v. LaRose*, No. 25-CV-3811 JLS (SBC), 2026 WL 92069 (S.D.
27 Cal. Jan. 13, 2026) (“Petitioner’s length of detention, without more, does not render his
28 detention unreasonable.”); *Duran Romero v. LaRose*, No. 25-cv-3567-AGS-VET, ECF

1 No. 7 (S.D. Cal. Jan. 14, 2026); *Shahin v. Noem*, No. 25-cv-2496-AGS-KSC, ECF No.
2 12 (S.D. Cal. Dec. 23, 2025); *Cordova Cordova*, No. 25-cv-2426-BAS-DDL, ECF No.
3 9 (S.D. Cal. Nov. 14, 2025); *Mendez Ramirez*, 612 F. Supp. 3d at 221; *Gonzalez Aguilar*
4 *v. Wolf*, 448 F. Supp. 3d at 1212; *de la Rosa Espinoza*, 2020 WL 3452967, at *6-8.

5 V. CONCLUSION

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

8
9 Dated: April 30, 2026

Respectfully submitted,

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