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7  
8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10  
11 BAKHTIAR SAHAK,

12 Petitioner,

13 v.

14  
15 CHRISTOPHER LAROSE, et al.,

16 Respondents.

Case No. 3:26-cv-02292-LEK-SBC

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

1 **I. INTRODUCTION**

2 Petitioner is a native and citizen of Afghanistan who most recently sought  
3 admission into the United States at the San Ysidro Port of Entry on September 14, 2025  
4 at a time when he did not possess proper documents to legally enter or remain in the  
5 United States. He asks the Court to order a bond hearing or his immediate release from  
6 Immigration and Customs Enforcement (ICE) custody. Petitioner's request, however,  
7 is contrary to 8 U.S.C. § 1225(b)(2), which expressly mandates his detention without  
8 bond until the conclusion of his removal proceedings. Moreover, Petitioner's detention  
9 of just over seven months has not become unconstitutionally prolonged. As such, he  
10 remains subject to mandatory detention and his requests for relief should be denied  
11 accordingly.

12 **II. BACKGROUND**

13 Petitioner, a native and citizen of Afghanistan, previously unlawfully entered the  
14 United States without inspection near Calexico, California on or about December 1,  
15 2021. Form I-213 (dated September 13, 2025), attached as *Exhibit 1*. That same day, he  
16 was encountered by a Border Patrol agent and was found to be without proper  
17 documents to legally enter or remain in the United States. On January 19, 2022, he was  
18 released on conditional parole that expired on September 6, 2025.

19 Petitioner then left and attempted to re-enter the United States through the San  
20 Ysidro Port of Entry on September 13, 2025, at which point he did not have proper  
21 documents to enter or remain in the United States. *Exhibit 1*. As such, he was  
22 determined to be an arriving alien inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I),  
23 was issued a Notice and Order of Expedited Removal, and was taken into Immigration  
24 and Customs Enforcement (ICE) custody pursuant to 8 U.S.C. § 1225(b). *Id.* He was  
25 then issued a Notice to Appear dated September 14, 2025 which initiated removal  
26 proceedings under 8 U.S.C. § 1229. Within these proceedings, Petitioner will have the  
27 opportunity to fully adjudicate his claims for relief from removal, and his case is  
proceeding in an ordinary and timely manner before the immigration court. Because

1 there is no administratively final order of removal, Petitioner remains mandatorily  
2 detained under 8 U.S.C. § 1225(b)(2)(A).

### 3 III. STATUTORY BACKGROUND

4 An “applicant for admission,” which 8 U.S.C. § 1225(a) defines as “[a]n alien  
5 present in the United States who has not been admitted or who arrives in the United  
6 States,” is subject to the detention framework set forth in 8 U.S.C. § 1225. That  
7 provision provides for mandatory detention, “pending a final determination of credible  
8 fear and persecution[.]” The United States Supreme Court has explained, “applicants  
9 for admission fall into one of two categories, those covered by § 1225(b)(1) and those  
10 covered by § 1225(b)(2).” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Section  
11 1225(b)(1) applies to those, like Petitioner, “initially determined to be inadmissible due  
12 to . . . lack of valid documentation[.]” *Id.* at 281. Once it is determined that the alien has  
13 a credible fear of persecution, as was determined here, then “the alien *shall be detained*  
14 for further consideration of the application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii)  
15 (emphasis added).

### 16 IV. ARGUMENT

17 The Court should deny this habeas petition because Petitioner’s detention is  
18 statutorily mandated under 8 U.S.C. § 1225(b)(1)(B)(ii) and it has not been  
19 unconstitutionally prolonged.

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

21 Petitioner is an arriving alien. As discussed above, arriving aliens are applicants  
22 for admission who are subject to expedited removal proceedings, *see* 28 U.S.C.  
23 § 1225(b)(1)(A)(i), unless—as occurred here—it has been determined that they have a  
24 credible fear of persecution. In such cases, the INA mandates that “the alien *shall be*  
25 *detained* for further consideration of the application for asylum.” 8 U.S.C.  
26 § 1225(b)(1)(B)(ii) (emphasis added); *see also Matter of M-S*, 27 I. & N. Dec. 509, 519  
27 (AG 2019) (“all aliens transferred from expedited to full [removal] proceedings after  
28 establishing a credible fear are ineligible for bond”). Because Petitioner is an arriving

1 alien found to have a credible fear of persecution and placed in full removal  
2 proceedings, his detention is mandated by section 1225(b) until the conclusion of his  
3 removal proceedings. *See Jennings*, 583 U.S. at 302 (“§§ 1225(b)(1) and (b)(2) mandate  
4 detention of aliens throughout the completion of applicable proceedings”).

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

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

23 **2. Petitioner’s mandatory detention is not unconstitutionally prolonged**

24 As an arriving alien, Petitioner is subject to mandatory detention under 8 U.S.C.  
25 § 1225(b)(1), which does not “impose[] any limit on the length of detention” or “say[]  
26 anything whatsoever about bond hearings.” *Jennings* 583 U.S. 281 at 297. The only  
27 circumstance in which the Court may consider Petitioner’s release is if his current  
28 detention has become unreasonably prolonged. Absent such a showing, mandatory

1 detention remains lawful, and Petitioner is not entitled to release.

2 In *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 207–09 (1953), a  
3 noncitizen in exclusion proceedings filed a habeas petition claiming that his prolonged  
4 detention without a hearing violated his constitutional rights. The Supreme Court,  
5 however, concluded that the noncitizen’s continued detention did not deprive him of  
6 any due process rights and rejected his petition. *Id.* at 212. In doing so, the Supreme  
7 Court stated: “[A]n alien on the threshold of initial entry stands on a different footing:  
8 ‘Whatever the procedure authorized by Congress is, it is due process as far as an alien  
9 denied entry is concerned.’” *Id.*

10 In *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 138–40  
11 (2020), the Supreme Court once again addressed the due process rights of individuals  
12 like Petitioner—inadmissible arriving noncitizens seeking initial entry into the United  
13 States. The Supreme Court stated that such individuals have no due process rights “other  
14 than those afforded by statute.” *Id.* at 107; *see also id.* at 140 (“[A]n alien in  
15 respondent’s position has only those rights regarding admission that Congress has  
16 provided by statute.”). The Supreme Court noted that its determination was supported  
17 by “more than a century of precedent.” *Id.* at 138 (citing *Nishimura Ekiu v. United*  
18 *States*, 142 U.S. 651, 660 (1892); *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544  
19 (1950); *Mezei*, 345 U.S. at 212; *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)). Because  
20 the only process due to Petitioner is that afforded under section 1225(b), the Court must  
21 reject his claim that his detention violates the Fifth Amendment’s Due Process Clause  
22 and deny his requested relief. *See Thuraissigiam*, 591 U.S. at 138–40; *Mendoza-*  
23 *Linares*, 51 F.4th at 1167; *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir.  
24 2022) (“The recognized liberty interests of U.S. citizens and aliens are not coextensive:  
25 the Supreme Court has ‘firmly and repeatedly endorsed the proposition that Congress  
26 may make rules as to aliens that would be unacceptable if applied to citizens.’”) (quoting  
27 *Demore v. Kim*, 538 U.S. 510, 522 (2003)); *Zelaya-Gonzalez*, 2023 WL 3103811, at \*4  
28 (“Binding Ninth Circuit and Supreme Court precedents are clear that Petitioner lacks

1 any rights beyond those conferred by statute, and no statute entitles Petitioner to a bond  
2 hearing.”).

3 Since the Supreme Court’s decision in *Thuraissigiam*, numerous published  
4 decisions have acknowledged its impact on the precise Fifth Amendment Due Process  
5 Clause that Petitioner raised in this petition: Does an alien detained under 8 U.S.C. §  
6 1225(b)(1) have a due process right to release or a bond hearing after being detained for  
7 a certain period of time? The answer is no. *See Mendoza-Linares v. Garland*, No. 21-  
8 cv-1169-BEN (AHG), 2024 WL 3316306, \*2 (S.D. Cal. June 10, 2024) (“[T]he Court  
9 finds that Petitioner has no Fifth Amendment right to a bond hearing pending his  
10 removal proceedings.”); *Zelaya-Gonzalez*, 2023 WL 3103811. \*3 (S.D. Cal. Apr. 25,  
11 2023) (same); *Rodriguez Figueroa v. Garland*, 535 F. Supp. 3d 122, 126–27 (W.D.N.Y.  
12 2021); *Gonzales Garcia v. Rosen*, 513 F. Supp. 3d 329, 336 (W.D.N.Y. 2021); *St.*  
13 *Charles v. Barr*, 514 F. Supp. 3d 570, 579 (W.D.N.Y. 2021); *Petgrave v. Aleman*, 529  
14 F. Supp. 3d 665, 667 (S.D. Tex. 2021).

15 Additionally, Petitioner’s claim fails *even if* the Court infers a constitutional right  
16 against prolonged mandatory detention because the length of his detention has not  
17 crossed the threshold that courts have found to be unreasonable. Courts generally  
18 “become extremely wary of permitting continued custody absent a bond hearing” once  
19 detention continues past a year. *Sibomana v. LaRose*, No. 22-cv-933-LL-NLS, 2023  
20 WL 3028093, at \*4 (S.D. Cal. April 20, 2023) (citation omitted); *see also Durand v.*  
21 *Allen*, No. 3:23-cv-00279-RBM-BGS, 2024 WL 711607, at \*5 (S.D. Cal. Feb. 21, 2024)  
22 (detained over two-and-a-half years); *Sanchez-Rivera v. Matuszewski*,  
23 No. 22-cv-1357-MMA (JLB), 2023 WL 139801, at \*6 (S.D. Cal. Jan. 9, 2023) (three  
24 years); *Yagao v. Figueroa*, No. 17-cv-2224-AJB-MDD, 2019 WL 1429582, at  
25 \*2 (S.D. Cal. March 29, 2019) (two years). However, Petitioner’s detention falls  
26 significantly short of the length courts have found to raise due process concerns.

27 In similar cases, courts in this district have applied the test in *Lopez v. Garland*,  
28 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022). *See, e.g., Sanchez-Rivera*, 2023 WL 139801,

1 at \*5 (“[W]hile the *Mathews* [*v. Eldridge*, 424 U.S. 319 (1976)] factors may be well-  
2 suited to determining whether due process requires a second bond hearing, they are not  
3 particularly dispositive of whether prolonged mandatory detention has become  
4 unreasonable in a particular case.”); *D.D. v. LaRose, et al.*, Case No. 25-cv-02581-BJC-  
5 JLB, ECF No. 10 at 7 (S.D. Cal. Oct. 22, 2025) (considering a similar claim and finding  
6 “the three-factor balancing test from *Lopez* . . . provides an appropriate assessment of  
7 the possible constitutional implications of Petitioner’s ongoing detention without  
8 process.”). Under *Lopez*, to determine whether continued mandatory detention has  
9 become unreasonable, “the Court will look to the total length of detention to date, the  
10 likely duration of future detention, and the delays in the removal proceedings caused by  
11 the petitioner and the government.” 631 F. Supp. 3d at 879 (emphasis added).

12 The factors discussed in *Lopez* weigh against finding that Petitioner’s detention  
13 is prolonged at this time. First, Petitioner has been detained for just over seven months  
14 (since September 13, 2025). Courts in this district have found detention for much longer  
15 periods to be unreasonably prolonged, but Petitioner’s current detention of  
16 approximately seven months is not unreasonable under any applicable legal standard.  
17 See *Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS, 2024 WL 711607 at \*5 (S.D. Cal.  
18 Feb. 21, 2024) (32 months); *Sibomana*, 2023 WL 3028093, at \*4 (19 months); *Sanchez-*  
19 *Rivera*, 2023 WL 139801 at \*6 (three years); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768,  
20 773 (S.D. Cal. 2020) (27 months); *Yagao*, 2019 WL 1429582, at \*1 (42 months).  
21 Second, the facts do not suggest that the likely duration of future detention weighs in  
22 Petitioner’s favor considering his immigration proceedings are moving along as  
23 expected and in a timely manner. And finally, there is no indication that the government  
24 has caused any delay in the removal proceedings.

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  
6 **V. CONCLUSION**

7 For the reasons stated herein, Respondents respectfully request that the Court  
8 dismiss this petition for lack of jurisdiction or deny it on the merits.

9 Dated: April 22, 2026

Respectfully submitted,

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