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

10  
11 YEVHENII DIBIZHEV,

12 Petitioner,

13 v.

14  
15 MARKWAYNE MULLIN, et al.,

16 Respondents.

Case No. 26-cv-02228-JES-MMP

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

17  
18 **I. INTRODUCTION**

19 Petitioner is an arriving alien and applicant for admission who seeks an order  
20 requiring his release from immigration custody which began when he sought admission  
21 into the United States at the San Ysidro Port of Entry on July 26, 2025. Petitioner's  
22 request, however, is contrary to 8 U.S.C. § 1225(b)(2), which expressly mandates his  
23 detention without a bond hearing until the conclusion of his removal proceedings which  
24 are scheduled for an individual hearing on May 1, 2026. Moreover, Petitioner's  
25 detention of less than nine months has not become unconstitutionally prolonged. As  
26 such, he remains subject to mandatory detention until the conclusion of his removal  
27 proceedings and his request for relief should be denied accordingly.

~o  
**II. FACTUAL BACKGROUND**



1 then “the alien *shall be detained* for further consideration of the application for asylum.”  
2 8 U.S.C. § 1225(b)(1)(B)(ii) (emphasis added).

3 **IV. ARGUMENT**

4 **A. The Petition should be dismissed for lack of jurisdiction because it does not**  
5 **name the warden of OMDC as a respondent**

6 At the outset, the Court should deny the Petition because Petitioner failed to name  
7 as a respondent the warden of the facility where he is detained. “[H]abeas petitioners  
8 challenging their present physical confinement [must] name their immediate custodian,  
9 the warden of the facility where they are detained, as the respondent to their petition.”  
10 *Doe v. Garland*, 109 F. 4th 1188, 1197 (9th Cir. 2024) (citing *Rumsfeld v. Padilla*, 542  
11 U.S. 426, 435 (2004)). “[T]he Court cannot exercise jurisdiction over [the habeas]  
12 Petition so long as [the petitioner] fails to name as respondent the warden of the  
13 detention facility where he is being detained[.]” *Mukhamadiev v. U.S. Dep’t of*  
14 *Homeland Security*, No. 25-cv-1017-DMS-MSB, 2025 WL 1208913, at \*3 (S.D. Cal.  
15 Apr. 25, 2025). As Petitioner has failed to name his immediate custodian, the petition  
16 should be dismissed for lack of jurisdiction.

17 **B. Petitioner is lawfully detained under the INA and the Constitution**

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

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

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

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

6 Petitioner requests that the Court order him released from ICE custody. But the  
7 Supreme Court has rejected that contention, explaining: “Read most naturally, §§  
8 1225(b)(1) and (b)(2) . . . mandate detention of applicants for admission until certain  
9 proceedings have concluded . . . Until that point, however, nothing in the statutory text  
10 imposes any limit on the length of detention. And neither § 1225(b)(1) nor §§  
11 1225(b)(2) says anything whatsoever about bond hearings.” *Jennings*, 583 U.S. at 297.  
12 Except for temporary parole granted at the discretion of the Attorney General “for  
13 urgent humanitarian reasons or significant public benefit” under 8 U.S.C. § 1182(d)(5),  
14 “there are no *other* circumstances under which aliens detained under § 1225(b) may be  
15 released.” *Id.* at 300 (emphasis in original). Petitioner’s detention is *mandated* under  
16 section 1225(b)(1)(B), and his petition must therefore be denied. *See, e.g.,*  
17 *Zelaya-Gonzalez v. Matuszewski*, No. 23-CV-151 JLS-KSC, 2023 WL 3103811, at  
18 \*3 (S.D. Cal. April 25, 2023) (applying *Jennings* to find that the petitioner had no right  
19 to release or a bond hearing).

## 20 2. Petitioner’s detention is not unconstitutionally prolonged

21 In *Jennings*, the Supreme Court evaluated the proper interpretation of 8 U.S.C. §  
22 1225(b) and stated, “[r]ead most naturally, [8 U.S.C.] §§ 1225(b)(1) and (b)(2) . . .  
23 mandate detention of applicants for admission until certain proceedings have  
24 concluded.” 583 U.S. 281 at 297. In other words, neither 8 U.S.C. § 1225(b)(1) nor §  
25 1225(b)(2) “impose[] any limit on the length of detention.” And “neither § 1225(b)(1)  
26 nor § 1225(b)(2) says anything whatsoever about bond hearings.” *Id.* The Supreme  
27 Court added that the sole means of release for noncitizens detained pursuant to 8 U.S.C.  
28 §§ 1225(b)(1) or (b)(2) prior to removal from the United States is temporary parole at

1 the discretion of the Attorney General under 8 U.S.C. § 1182(d)(5). *Id.* at 300 (“That  
2 express exception to detention implies that there are no *other* circumstances under  
3 which aliens detained under [8 U.S.C.] § 1225(b) may be released.”) (emphasis in  
4 original). “In sum, [8 U.S.C.] §§ 1225(b)(1) and (b)(2) mandate detention of aliens  
5 throughout the completion of applicable proceedings[.]” *Id.* at 302.

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

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

1 the Supreme Court has ‘firmly and repeatedly endorsed the proposition that Congress  
2 may make rules as to aliens that would be unacceptable if applied to citizens.’”) (quoting  
3 *Demore v. Kim*, 538 U.S. 510, 522 (2003)); *Zelaya-Gonzalez*, 2023 WL 3103811, at \*4  
4 (“Binding Ninth Circuit and Supreme Court precedents are clear that Petitioner lacks  
5 any rights beyond those conferred by statute, and no statute entitles Petitioner to a bond  
6 hearing.”).

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

19 Even if the Court infers a constitutional right against prolonged mandatory  
20 detention, Petitioner’s claim still fails. “In general, as detention continues past a year,  
21 courts become extremely wary of permitting continued custody absent a bond hearing.”  
22 *Sibomana v. LaRose*, No. 22-cv-933-LL-NLS, 2023 WL 3028093, at \*4 (S.D. Cal.  
23 April 20, 2023) (citation omitted); *see also Durand v. Allen*, No. 3:23-cv-00279-RBM-  
24 BGS, 2024 WL 711607, at \*5 (S.D. Cal. Feb. 21, 2024) (detained over two-and-a-half  
25 years); *Sanchez-Rivera v. Matuszewski*, No. 22-cv-1357-MMA (JLB), 2023 WL  
26 139801, at \*6 (S.D. Cal. Jan. 9, 2023) (three years); *Yagao v. Figueroa*,  
27 No. 17-cv-2224-AJB-MDD, 2019 WL 1429582, at \*2 (S.D. Cal. March 29, 2019) (two

1 years). Petitioner’s detention of less than nine months falls significantly short of the  
2 length courts have found to raise due process concerns.

3 In similar cases, courts in this district have applied the test in *Lopez v. Garland*,  
4 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022). *See, e.g., Sanchez-Rivera*, 2023 WL 139801,  
5 at \*5 (“[W]hile the *Mathews [v. Eldridge]*, 424 U.S. 319 (1976)] factors may be well-  
6 suited to determining whether due process requires a second bond hearing, they are not  
7 particularly dispositive of whether prolonged mandatory detention has become  
8 unreasonable in a particular case.”); *D.D. v. LaRose, et al.*, Case No. 25-cv-02581-BJC-  
9 JLB, ECF No. 10 at 7 (S.D. Cal. Oct. 22, 2025) (considering a similar claim and finding  
10 “the three-factor balancing test from *Lopez* . . . provides an appropriate assessment of  
11 the possible constitutional implications of Petitioner’s ongoing detention without  
12 process.”). Under *Lopez*, to determine whether continued mandatory detention has  
13 become unreasonable, “the Court will look to the total length of detention to date, the  
14 likely duration of future detention, and the delays in the removal proceedings caused by  
15 the petitioner and the government.” 631 F. Supp. 3d at 879.

16 First, Petitioner has been detained for less than nine months (since July 26, 2025).  
17 Courts in this district have found detention for *much longer* periods to be unreasonably  
18 prolonged, but Petitioner’s current detention of less than nine months is not  
19 unreasonable by any standard. *See Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS,  
20 2024 WL 711607 at \*5 (S.D. Cal. Feb. 21, 2024) (32 months); *Sibomana*, 2023 WL  
21 3028093, at \*4 (19 months); *Sanchez-Rivera*, 2023 WL 139801 at \*6 (three years);  
22 *Kydrali v. Wolf*, 499 F. Supp. 3d 768, 773 (S.D. Cal. 2020) (27 months); *Yagao*, 2019  
23 WL 1429582, at \*1 (42 months). Second, the likely duration of future detention weighs  
24 against Petitioner because his immigration proceedings are moving along as expected  
25 and in a timely manner, and there is an individual merits hearing coming up in less than  
26 a month –on May 1, 2026. *Exhibit 2*. Finally, there is no indication that the government  
27 has caused any delay in the removal proceedings. Thus, the *Lopez* factors all weigh  
28 against Petitioner.

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**V. CONCLUSION**

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

DATED: April 17, 2026

Respectfully submitted,

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