

1 ADAM GORDON
United States Attorney
2 CAMILLE SAVEDRA
California Bar No. 336490
3 MICHAEL WALLACE
Maryland Bar No. 9912160256
4 Assistant U.S. Attorneys
Office of the U.S. Attorney
5 880 Front Street, Room 6293
San Diego, CA 92101-8893
6 Telephone: (619) 546-5084/8714
Email: camille.savedra@usdoj.gov
7 michael.wallace4@usdoj.gov

8 Attorneys for Respondents

9
10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 LILIANA DE LOS ANGELES
13 CORTES OCHOA,

14
15 Petitioner,

16 v.

17 DIRECTOR, Otay Mesa Detention
18 Center; *et al.*,

19 Respondents.
20

Case No.: 26-cv-02284-AGS-DEB

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

21
22 **I. INTRODUCTION**

23 Petitioner requests the Court to order her immediate release from Immigration
24 and Customs Enforcement (ICE) custody or require that she be afforded a bond
25 hearing. As an arriving alien and applicant for admission, however, Petitioner's
26 detention is mandated by 8 U.S.C. § 1225(b)(2) until the conclusion of her removal
27 proceedings. Accordingly, the Court should deny Petitioner's requests for relief.

28 ///

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a native and citizen of Columbia. *See* Exhibit 1 (I-213).¹ On September 30, 2025, she applied for admission to the United States at the Otay Mesa port of entry. She did not then possess legal documentation to be in or enter the United States. *Id.* She was determined to be an arriving alien inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I), placed into expedited removal proceedings under 8 U.S.C. § 1225(b)(1), and taken into Immigration and Customs Enforcement (ICE) custody pursuant to 8 U.S.C. § 1225(b). *Id.* On October 16, 2025, she was issued a Notice to Appear (NTA). Exhibit 2 (NTA). The filing of the NTA initiated removal proceedings, pursuant to 8 U.S.C. § 1229a, against Petitioner, and those proceedings remain ongoing. Within her removal proceedings under § 1229a, Petitioner applied for relief from removal before an immigration judge (IJ), including asylum under 8 U.S.C. § 1158, withholding of removal under 8 U.S.C. § 1231(b)(3), and relief under the Convention Against Torture. On January 14, 2026, the Department of Homeland Security (DHS) filed a Motion to Pretermitt (“Motion”) the Petitioner’s applications for relief because Petitioner is subject to the Asylum Cooperative Agreement (ACA) with Honduras and Ecuador. *See* Exhibit 3 (IJ Order). On February 5, 2026, Petitioner appeared before an immigration judge for an individual merits hearing on her applications for relief from removal and DHS’s Motion. *Id.* The Immigration Judge denied the applications for relief, granted DHS’s Motion, and ordered her removed to Honduras. *Id.*

Petitioner appealed the removal order to the Board of Immigration Appeals (BIA) on March 4, 2026. Exhibit 4 (Receipt for Appeal). The appeal remains pending. As a result, there is no administratively final order of removal at this time and Petitioner remains mandatorily detained under 8 U.S.C. § 1225(b)(2)(A).

///

¹ The attached exhibits are true copies, with redactions of private information, of documents obtained from Immigration and Customs Enforcement (ICE) counsel.

III. STATUTORY BACKGROUND

Section 235 of the Immigration and Nationality Act (INA), codified at 8 U.S.C. § 1225, applies to an “applicant for admission,” defined as an “alien present in the United States who has not been admitted” or “who arrives in the United States.” 8 U.S.C. § 1225(a)(1). “[A]pplicants 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 arriving aliens and “certain other” aliens “initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid document.” *Id.* (citing 8 U.S.C. § 1225(b)(1)(A)(i)). These aliens are generally subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if “the alien indicates an intention to apply for asylum . . . or a fear of persecution,” immigration officers will refer the alien for a credible fear interview. 8 U.S.C. § 1225(b)(1)(A)(ii). “If the officer determines at the time of the interview that [the] alien has a credible fear of persecution . . . , the alien *shall be detained* for further consideration of the application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii) (emphasis added). If the alien does not indicate an intent to apply for asylum, does not express a fear of persecution, or is “found not to have such a fear,” they “shall be detained . . . until removed” from the United States. 8 U.S.C. §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.* Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained for a removal proceeding “if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A); *Matter of Q. Li*, 29 I&N Dec. 66, 68 (BIA 2025) (“for aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention ‘until removal proceedings have concluded.’”)

(citing *Jennings*, 583 U.S. at 299). However, DHS has the sole discretionary authority to temporarily release on parole “any alien applying for admission to the United States” on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.” *Id.* § 1182(d)(5)(A); see *Biden v. Texas*, 597 U.S. 785, 806 (2022).

IV. ARGUMENT

Petitioner’s habeas petition should be denied because she is lawfully detained under the INA and the Constitution.

1. Petitioner is mandatorily detained under 8 U.S.C. § 1225(b)(2).

Petitioner’s claim fails because she is subject to mandatory detention under 8 U.S.C. § 1225(b)(2). Under 8 U.S.C. § 1225(a)(1), an “applicant for admission” is defined as an “alien present in the United States who has not been admitted or who arrives in the United States.” As explained above, applicants for admission “fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings*, 583 U.S. at 287.

Section 1225(b)(2)(A) requires mandatory detention of “an alien who is *an applicant for admission*, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted[.]” *Chavez v. Noem*, No. 3:25-cv-02325, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24, 2025) (quoting 8 U.S.C. § 1225(b)(2)(A)) (emphasis in original). Petitioner contends that she is entitled to a bond hearing. But the Supreme Court has rejected such contention, explaining: “Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded. . . . 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).

1 As Petitioner's removal proceedings are pending, and she has not been granted
2 temporary parole, section 1225(b)(2) mandates her detention until the proceedings have
3 concluded. *Jennings*, 583 U.S. at 297 ("Once those proceedings end, detention under
4 § 1225(b) must end as well."). Because Petitioner is lawfully detained under
5 section 1225(b)(2) and the statute does not entitle her to a bond hearing at this time, her
6 petition must be denied. *See, e.g., Zelaya-Gonzalez v. Matuszewski*, No. 23-CV-151
7 JLS-KSC, 2023 WL 3103811, at *3 (S.D. Cal. April 25, 2023) (applying *Jennings* to
8 find that the petitioner had no right to release or a bond hearing).

9 **2. Petitioner's detention does not violate due process.**

10 In *Jennings*, the Supreme Court evaluated the proper interpretation of 8 U.S.C.
11 § 1225(b). The Supreme Court stated that, "[r]ead most naturally, [8 U.S.C.]
12 §§ 1225(b)(1) and (b)(2) . . . mandate detention of applicants for admission until certain
13 proceedings have concluded." *Id.* at 297. In other words, neither 8 U.S.C. § 1225(b)(1)
14 nor § 1225(b)(2) "impose[] any limit on the length of detention" and "neither
15 § 1225(b)(1) nor § 1225(b)(2) say[] anything whatsoever about bond hearings." *Id.* The
16 Supreme Court added that the sole means of release for noncitizens detained pursuant
17 to 8 U.S.C. §§ 1225(b)(1) or (b)(2) prior to removal from the United States is temporary
18 parole at the discretion of the Attorney General under 8 U.S.C. § 1182(d)(5). *Id.* at 300
19 ("That express exception to detention implies that there are no *other* circumstances
20 under which aliens detained under [8 U.S.C.] § 1225(b) may be released.") (emphasis
21 in original). "In sum, [8 U.S.C.] §§ 1225(b)(1) and (b)(2) mandate detention of aliens
22 throughout the completion of applicable proceedings[.]" *Id.* at 302.

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

1 is, it is due process as far as an alien denied entry is concerned.” *Id.* at 212 (citation
2 omitted).

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

24 Since the Supreme Court’s decision in *Thuraissigiam*, numerous published
25 decisions have acknowledged *Thuraissigiam*’s impact on the precise Fifth Amendment
26 Due Process Clause that Petitioner might have raised in this petition: Does an alien
27 detained under 8 U.S.C. § 1225(b)(1) have a due process right to release or a bond
28 hearing after being detained for a certain period of time? The answer is no. *See*

1 *Mendoza-Linares v. Garland*, No. 21-cv-1169-BEN (AHG), 2024 WL 3316306, *2
 2 (S.D. Cal. June 10, 2024) (“[T]he Court finds that Petitioner has no Fifth Amendment
 3 right to a bond hearing pending his removal proceedings.”); *Zelaya-Gonzalez*, 2023
 4 WL 3103811. *3 (S.D. Cal. Apr. 25, 2023) (same); *Rodriguez Figueroa v. Garland*,
 5 535 F. Supp. 3d 122, 126–27 (W.D.N.Y. 2021); *Gonzales Garcia v. Rosen*, 513 F.
 6 Supp. 3d 329, 336 (W.D.N.Y. 2021); *St. Charles v. Barr*, 514 F. Supp. 3d 570, 579
 7 (W.D.N.Y. 2021); *Petgrave v. Aleman*, 529 F. Supp. 3d 665, 667 (S.D. Tex. 2021).

8 Even if the Court infers a constitutional right against prolonged mandatory
 9 detention, Petitioner’s claim still fails. “In general, as detention continues past a year,
 10 courts become extremely wary of permitting continued custody absent a bond hearing.”
 11 *Sibomana v. LaRose*, No. 22-cv-933-LL-NLS, 2023 WL 3028093, at *4 (S.D. Cal.
 12 April 20, 2023) (citation omitted); *see also Durand v. Allen*, No. 3:23-cv-00279-RBM-
 13 BGS, 2024 WL 711607, at *5 (S.D. Cal. Feb. 21, 2024) (detained over two-and-a-half
 14 years); *Sanchez-Rivera v. Matuszewski*, No. 22-cv-1357-MMA (JLB), 2023 WL
 15 139801, at *6 (S.D. Cal. Jan. 9, 2023) (three years); *Yagao v. Figueroa*,
 16 No. 17-cv-2224-AJB-MDD, 2019 WL 1429582, at *2 (S.D. Cal. March 29, 2019) (two
 17 years). Petitioner’s detention falls significantly short of the length these courts have
 18 found to raise due process concerns.

19 In similar cases, courts in this district have applied the test in *Lopez v. Garland*,
 20 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022). *See, e.g., Sanchez-Rivera*, 2023 WL 139801,
 21 at *5 (“[W]hile the *Mathews* [v. *Eldridge*, 424 U.S. 319 (1976)] factors may be well-
 22 suited to determining whether due process requires a second bond hearing, they are not
 23 particularly dispositive of whether prolonged mandatory detention has become
 24 unreasonable in a particular case.”); *D.D. v. LaRose, et al.*, Case No. 25-cv-02581-BJC-
 25 JLB, ECF No. 10 at 7 (S.D. Cal. Oct. 22, 2025) (considering a similar claim and finding
 26 “the three-factor balancing test from *Lopez* . . . provides an appropriate assessment of
 27 the possible constitutional implications of Petitioner’s ongoing detention without
 28 process.”).

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

5 Here, Petitioner has been detained for approximately seven months. Courts in
6 this district have found detention for much longer periods to be unreasonably
7 prolonged. *See Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS, 2024 WL 711607 at
8 *5 (S.D. Cal. Feb. 21, 2024) (32 months); *Sibomana*, 2023 WL 3028093, at *4 (19
9 months); *Sanchez-Rivera*, 2023 WL 139801 at *6 (three years); *Kydyrali v. Wolf*, 499
10 F. Supp. 3d 768, 773 (S.D. Cal. 2020) (27 months); *Yagao*, 2019 WL 1429582, at *1
11 (42 months). The length of detention “is the most important factor.” *Sanchez-Rivera*,
12 2023 WL 139801, at *6 (citation omitted). Petitioner’s current detention does not fall
13 within the range those courts have found to be unreasonable. Moreover, the length of
14 Petitioner’s detention, by itself, does not favor granting habeas relief. *See Sadeqi v.*
15 *LaRose*, No. 25-cv-2587-RSH-BJW, 2025 WL 3154520, at *3 (S.D. Cal. Nov. 12,
16 2025) (“The Court agrees with Respondents that the length of Petitioner’s detention to
17 date—almost 12 months—does not by itself, without more, establish prolonged
18 detention in violation of due process.”). Not only does the length of Petitioner’s
19 detention fall comparatively short of the length courts in this district have found to
20 warrant habeas relief, but the other *Lopez* factors do not favor habeas relief either. Next,
21 the likely duration of future detention weighs against Petitioner. Petitioner’s individual
22 merits hearing recently took place on February 5, 2026. Exhibit 3. Shortly thereafter,
23 Petitioner filed an appeal with the BIA. Exhibit 4. The BIA is considering her appeal
24 at which point her path to release or removal to Honduras should be clear. Finally, there
25 is no indication of delay in the removal proceedings on the part of the government.

26 Balancing the above factors, the record does not support a finding that “detention
27 has become so unreasonable as to require an initial bond hearing,” *Sanchez-Rivera*,
28 2023 WL 139801, at *6, or an order requiring Petitioner’s release.

1 Petitioner was lawfully detained when she applied for admission to the United
2 States. As a result, Petitioner is rightly considered an applicant for admission, and her
3 mandatory detention does not violate due process. *See Markov v. LaRose*, No. 25-CV-
4 3811 JLS (SBC), 2026 WL 92069 (S.D. Cal. Jan. 13, 2026) (“Petitioner’s length of
5 detention, without more, does not render his detention unreasonable.”); *Duran Romero*
6 *v. LaRose*, No. 25-cv-3567-AGS-VET, ECF No. 7 (S.D. Cal. Jan. 14, 2026); *Shahin v.*
7 *Noem*, No. 25-cv-2496-AGS-KSC, ECF No. 12 (S.D. Cal. Dec. 23, 2025); *Cordova*
8 *Cordova*, No. 25-cv-2426-BAS-DDL, ECF No. 9 (S.D. Cal. Nov. 14, 2025); *Mendez*
9 *Ramirez*, 612 F. Supp. 3d at 221; *Gonzalez Aguilar v. Wolf*, 448 F. Supp. 3d at 1212;
10 *de la Rosa Espinoza*, 2020 WL 3452967, at *6-8.

11 **V. CONCLUSION**

12 For the reasons stated herein, Respondents respectfully request that the Court
13 deny this petition on the merits.

14
15 Dated: April 21, 2026

Respectfully submitted,

16 ADAM GORDON
17 United States Attorney

18 s/ Camille Savedra
19 CAMILLE SAVEDRA
20 MICHAEL D. WALLACE
21 Assistant United States Attorneys
22 Attorneys for Respondents
23
24
25
26
27
28