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

10
11 TEMESGEN SISAY BEJTOWAL,

12 Petitioner,

13 v.

14
15 CHRISTOPHER LAROSE,

16 Respondent.

Case No. 3:26-cv-02309-BJC-BJW

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

1 **I. INTRODUCTION**

2 Petitioner is a native and citizen of Ethiopia who unlawfully entered the United
3 States without inspection near the Otay Mesa Port of Entry on September 9, 2025 at a
4 time when he did not possess proper documents to legally enter or remain in the United
5 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 which remain ongoing. Moreover,
9 Petitioner's detention of less than eight months has not become unconstitutionally
10 prolonged. As such, he remains subject to mandatory detention and his requests for
11 relief should be denied accordingly.

12 **II. BACKGROUND**

13 Petitioner is a native and citizen of Ethiopia who unlawfully entered the United
14 States without inspection near the Otay Mesa Port of Entry on or about September 9,
15 2025. Form I-213, attached as *Exhibit 1*. Shortly thereafter, he was encountered by a
16 Border Patrol agent and was found to be without proper documents to legally enter or
17 remain in the United States. *Id.* He was therefore determined to be an arriving alien
18 inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I), issued a Notice and Order of
19 Expedited Removal, and was taken into ICE custody pursuant to 8 U.S.C.
20 § 1225(b)(1)(B).

21 Petitioner subsequently requested asylum and on September 25, 2025, an asylum
22 officer found that he demonstrated a credible fear of persecution or torture. Thus, the
23 Notice and Order of Expedited Removal was not executed, and on September 25, 2025,
24 Petitioner was issued a Notice to Appear, which initiated removal proceedings under 8
25 U.S.C. § 1229. Petitioner's immigration proceedings progressed in an ordinary and
26 timely manner, and he was ordered removed from the United States at the conclusion
27 of his individual merits hearing on March 11, 2026. His appeal of that order, filed on or
^o about March 16, 2026, remains pending. As such, there is no administratively final order

1 of removal and Petitioner remains mandatorily detained under 8 U.S.C. §
2 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 become
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 a bond hearing or his release from ICE
6 custody. But the Supreme Court has rejected such contention, explaining: “Read most
7 naturally, §§ 1225(b)(1) and (b)(2) . . . mandate detention of applicants for admission
8 until certain proceedings have concluded . . . Until that point, however, nothing in the
9 statutory text imposes any limit on the length of detention. And neither § 1225(b)(1)
10 nor §§ 1225(b)(2) says anything whatsoever about bond hearings.” *Jennings*, 583 U.S.
11 at 297. Except for temporary parole granted at the discretion of the Attorney General
12 “for urgent humanitarian reasons or significant public benefit” under 8 U.S.C. §
13 1182(d)(5), “there are no *other* circumstances under which aliens detained under §
14 1225(b) may be 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
~° (“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 under eight months.
14 Courts in this district have found detention for much longer periods to be unreasonably
15 prolonged, but Petitioner’s current detention is not unreasonable under any applicable
16 legal standard. *See Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS, 2024 WL 711607
17 at *5 (S.D. Cal. Feb. 21, 2024) (32 months); *Sibomana*, 2023 WL 3028093, at *4 (19
18 months); *Sanchez-Rivera*, 2023 WL 139801 at *6 (three years); *Kydyrali v. Wolf*, 499
19 F. Supp. 3d 768, 773 (S.D. Cal. 2020) (27 months); *Yagao*, 2019 WL 1429582, at *1
20 (42 months). Second, the facts do not suggest that the likely duration of future detention
21 weighs in Petitioner’s favor considering his immigration proceedings are moving along
22 as expected and in a timely manner. And finally, there is no indication that the
23 government has caused any delay in the removal proceedings.

24 Accordingly, Petitioner is subject to mandatory detention, which does not violate
25 due process. *See Markov v. LaRose*, No. 25-CV-3811 JLS (SBC), 2026 WL 92069 (S.D.
26 Cal. Jan. 13, 2026) (“Petitioner’s length of detention, without more, does not render his
27 detention unreasonable.”); *Duran Romero v. LaRose*, No. 25-cv-3567-AGS-VET, ECF
28 No. 7 (S.D. Cal. Jan. 14, 2026); *Shahin v. Noem*, No. 25-cv-2496-AGS-KSC, ECF No.

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

4 **V. CONCLUSION**

5 For the reasons stated herein, Respondent respectfully requests that the Court
6 dismiss this petition.

7 Dated: April 21, 2026

Respectfully submitted,

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9 United States Attorney

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11 ALLIE MALONE SUBKE
12 Assistant United States Attorney

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