ADAM GORDON
United States Attorney
MICHAEL D. WALLACE
Assistant United States Attorney
Maryland Bar No. 9912160256
Office of the U.S. Attorney
880 Front Street, Room 6293
San Diego, CA 92101-8893
Telephone(619) 546-8714
Email: Michael.Wallace4@usdoj.gov

Attorneys for Respondents

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

NGUYEN VAN QUANG,

Petitioner,

v.

CHRISTOPHER LAROSE, *et al.*,

Respondents.

Case No.: 26-cv-2236-RBM-AHG

RETURN TO PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

Petitioner requests that the Court order his release from Immigration and Customs Enforcement (ICE) custody or require that he be afforded a bond hearing. As an alien found to have a credible fear of persecution, however, Petitioner's detention is mandated by 8 U.S.C. § 1225(b)(1)(B)(ii) until the conclusion of his removal proceedings. As Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(1)(B)(ii), the Court should deny Petitioner's requests for relief.

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a native and citizen of Vietnam, who entered the United States illegally and without inspection west of the Otay Mesa Point of Entry, California, on July 29, 2025. Exhibit (Ex.)1 (Form I-213).[1] Petitioner did not then have any valid entry documents to enter the United States and had not been admitted or paroled into the United States. He was determined to be inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I) and 8 U.S.C. §1182(a)(6)(A)(i), placed in expedited removal proceedings pursuant to 8 U.S.C. § 1225(b)(1), and taken into Immigration and Customs Enforcement (ICE) custody pursuant to 8 U.S.C. § 1225(b)(1)(B). Petitioner has remained in ICE custody since his entry into the United States. An asylum officer interviewed Petitioner pursuant to 8 U.S.C. § 1225(b)(1)(B). On August 28, 2025, an immigration judge vacated the negative fear finding. On September 8, 2025, Petitioner was issued a Notice to Appear (NTA). Ex. 2 (Notice to Appear). The filing of the NTA initiated removal proceedings, pursuant to 8 U.S.C. § 1229a, against Petitioner, and those proceedings remain ongoing. Within his 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. The first master calendar hearing was scheduled for September 22, 2025. *Id.* After five delay requests by the Petitioner to obtain counsel and to prepare his claims resulting in about six months of delay, the merits hearing is scheduled for April 28, 2026. Ex. 3 (Event History); Ex. 4 (Adjournment Codes). Petitioner's removal proceedings remain pending. As a result, there is no administratively final order of removal currently. Petitioner remains mandatorily detained under 8 U.S.C. § 1225(b)(1)(B).

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

IV. ARGUMENT

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

The Court must deny his habeas petition because Petitioner's detention is statutorily mandated under 8 U.S.C. § 1225(b)(1)(B)(ii) and has not been unconstitutionally prolonged.

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

Petitioner's claim fails because he is subject to mandatory detention under 8 U.S.C. § 1225(b)(1). 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)(1) – the provision relevant here – applies because Petitioner was found in the United States without proper documents authorizing his presence. And that statute mandates detention when an immigration officer determines that the alien has a credible fear of persecution. *See* 8 U.S.C. § 1225(b)(1)(B)(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.") (emphasis added); *see also Matter of M-S*, 27 I. & N. Dec. 509, 519 (AG 2019) ("all aliens transferred from expedited to full [removal] proceedings after establishing a credible fear are ineligible for bond").

Petitioner requests that the Court order him released from ICE custody. 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).

As Petitioner's removal proceedings are pending, and he has not been granted temporary parole, section 1225(b)(1)(B) mandates his detention until the proceedings have concluded. *Jennings*, 583 U.S. at 297 ("Once those proceedings end, detention under § 1225(b) must end as well."). Because Petitioner is lawfully detained under section 1225(b)(1)(B) and the statute does not entitle him to release at this time, his petition must be denied. *See, e.g.*, *Zelaya-Gonzalez v. Matuszewski*, No. 23-CV-151

JLS-KSC, 2023 WL 3103811, at *3 (S.D. Cal. April 25, 2023) (applying *Jennings* to find that the petitioner had no right to release or a bond hearing).

2. Petitioner's detention is not unconstitutionally prolonged.

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

In *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 207–09 (1953), a noncitizen in exclusion proceedings filed a habeas petition claiming that his prolonged detention without a hearing violated his constitutional rights. The Supreme Court rejected the petition, concluding that the noncitizen's continued detention did not deprive him of any due process rights, stating: "[A]n alien on the threshold of initial entry stands on a different footing: 'Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.'" *Id.* at 212 (citation omitted). "*Mezei* therefore suggests that the Court found that excludable aliens simply enjoy no constitutional right to be paroled into the United States, even if the only alternative is prolonged detention." *Barrera-Echavarria v. Rinson*, 44 F.3d 1441, 1450 (9th Cir. 1995) (en banc), *superseded by statute as stated in Xi v. INS*, 298 F.3d 832 (9th Cir. 2002). That is, "Supreme Court precedent squarely precludes a conclusion

that [excludable aliens] have a constitutional right to be free from detention, even for an extended time." *Id.* at 1449. *Barrera-Echavarria*'s application—at least as it relates to arriving aliens—has never been overruled. The Ninth Circuit continues to cite *Barrera-Echavarria*'s due process (i.e., non-statutory) analysis. *See Llamas-Lopez v. Barr*, 825 F. App'x 523, 524 (Mem.) (9th Cir. 2020); *Angov v. Lynch*, 788 F.3d 893, 898 (9th Cir. 2015) (Angov's "claim of a procedural due process violation simply can't be squared with the Supreme Court's teachings in *Mezei*" and "our circuit's settled precedent").

A district court within this Circuit provided a thorough summary of "the law of the Ninth Circuit as it currently stands [including *Barrera-Echavarria*, and its treatment by *Rodriguez II, Rodriguez III,* and *Rodriguez V*]," in *Ibarra-Perez v. Howard*, 468 F. Supp. 3d 1156, 1177 (D. Arizona 2020). The court there reasoned that "Respondents have the better side of this argument" and rejected the notion that an arriving alien detained under § 1225(b) was entitled to a bond hearing, because it "must do its best to discern and apply the law[.]" The above must be true because *Mezei* "is still good law." *See Aracely, R v. Nielsen*, 319 F. Supp. 3d 110, 145 (D.D.C. 2018). "*Mezei* therefore remains binding precedent for our court—which means the Due Process Clause does not forbid [petitioner's] detention." *Martinez v. Larose*, 980 F.3d 551, 554 (6th Cir. 2020) (Mem.) (Thapar, J., concurring in the denial of rehearing *en banc* based on *Mezei* and *Thuraissigiam*).

And because it remains good law, *Mezei* "is directly on point and controls this case." *Poonjani v. Shanahan*, 319 F. Supp. 3d 644 (S.D.N.Y. 2018) (denying bond because—for an alien on the "threshold of initial entry"—due process is "whatever procedures has been authorized by Congress"). Other courts agree. *See Arana v. Arteta*, 2026 WL 279786 (S.D.N.Y. Feb. 3, 2026) (citing *Poonjani*); *Acosta v. Arteta*, 2026 WL 263470 (S.D.N.Y. Feb. 2, 2026) (citing *Poonjani*); *Mendez Ramirez v. Decker*, 612 F. Supp. 3d 200 (S.D.N.Y. 2020) (citing *Poonjani*); *Gonzalez Aguilar v. Wolf*, 448 F. Supp. 3d 1202, 1212 (D.N.M. 2020) ("*Mezei* and its progeny do not hold that

Petitioner has no due-process rights; rather, the applicable statutory process shapes her procedural due-process rights. Because Petitioner has no statutory right to release or a bond hearing, she has no procedural due-process right to the relief requested.").

District courts in this Circuit that disagree generally neither grapple with *Mezei* nor *Barrera-Echavarria*. *See Ibarra-Perez*, 468 F. Supp. 3d at 1177, fn. 25 (citing *Poonjani* and rejecting the leading "prolonged detention" case, *Banda v. McAleenan*, 385 F. Supp. 3d 1099 (W.D. Wash. 2019), because *Banda* did not even discuss *Barrera-Echavarria,* the "entry fiction" doctrine, or portions of *Rodriguez II and III* and "seem to adopt *Barrera-Echavarria*'s logic as it pertains to arriving aliens").

Mezei cannot be distinguished simply on "national security" grounds. Those facts were immaterial. *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (distinguishing *Mezei* because he was treated "as if stopped at the border," and "*that made all the difference*") (emphasis added). In fact, in *Barrera-Echavarria*, the dissent criticized the majority's reliance on *Mezei,* claiming that "[n]o such national security concerns are implicated in Barrera's case." *See* 44 F.3d at 1452 (Pregerson, J., dissenting). Nor can *Mezei* be dismissed as merely an exclusion case. *See id.* at 1449-50 ("[*Mezei*'s] holding necessarily included a determination that Mezei's detention was legal as well."); *see Zadvydas*, 533 U.S. at 693 (stating *Mezei* involved "indefinite detention").

Mezei has direct application here; this precedent thus controls "until explicitly overruled by that Court." *United States v. Esqueda*, 88 F.4th 818, 828 (9th Cir. 2023).

In *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 138–40 (2020), the Supreme Court once again addressed the due process rights of inadmissible arriving noncitizens seeking initial entry into the United States. The Supreme Court stated that such individuals have no due process rights "other than those afforded by statute." *Id.* at 107; *see also id.* at 140 ("[A]n alien in respondent's position has only those rights regarding admission that Congress has provided by statute."). The Supreme Court noted that its determination was supported by "more than a century of precedent." *Id.* at 138 (citing *Nishimura Ekiu v. United States*, 142 U.S. 651, 660

(1892); *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950); *Mezei*, 345 U.S. at 212; *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)). Because the only process due Petitioner is that afforded under section 1225(b), the Court must reject his claim that his detention violates the Fifth Amendment's Due Process Clause and deny his requested relief. *See Thuraissigiam*, 591 U.S. at 138–40; *Mendoza-Linares*, 51 F.4th at 1167; *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) ("The recognized liberty interests of U.S. citizens and aliens are not coextensive: the Supreme Court has 'firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens.'") (quoting *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 any rights beyond those conferred by statute, and no statute entitles Petitioner to a bond hearing.").

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

Even if the Court infers a constitutional right against prolonged mandatory detention, Petitioner's claim still fails. "In general, as detention continues past a year, courts become extremely wary of permitting continued custody absent a bond hearing."

Sibomana v. LaRose, No. 22-cv-933-LL-NLS, 2023 WL 3028093, at *4 (S.D. Cal. April 20, 2023) (citation omitted); *see also Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS, 2024 WL 711607, at *5 (S.D. Cal. Feb. 21, 2024) (detained over two-and-a-half years); *Sanchez-Rivera v. Matuszewski*, No. 22-cv-1357-MMA (JLB), 2023 WL 139801, at *6 (S.D. Cal. Jan. 9, 2023) (three years); *Yagao v. Figueroa*, No. 17-cv-2224-AJB-MDD, 2019 WL 1429582, at *2 (S.D. Cal. March 29, 2019) (two years).

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

First, Petitioner has been detained for about nine months. The length of this period of detention is shorter than many of the lengths of detention where the Courts in this district have found detention to be unreasonably prolonged. *See Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS, 2024 WL 711607 at *5 (S.D. Cal. Feb. 21, 2024) (32 months); *Sibomana*, 2023 WL 3028093, at *4 (19 months); *Sanchez-Rivera*, 2023 WL 139801 at *6 (three years); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 773 (S.D. Cal. 2020) (27 months); *Yagao*, 2019 WL 1429582, at *1 (42 months). The length of detention "is the most important factor." *Sanchez-Rivera*, 2023 WL 139801, at *6 (citation omitted).

Petitioner's current detention does not fall within the range those courts have found to be unreasonable. Moreover, the length of Petitioner's detention, by itself, does not favor granting habeas relief. *See Sadeqi v. LaRose*, No. 25-cv-2587-RSH-BJW, 2025 WL 3154520, at *3 (S.D. Cal. Nov. 12, 2025) ("The Court agrees with Respondents that the length of Petitioner's detention to date—almost 12 months—does not by itself, without more, establish prolonged detention in violation of due process."). Second, the likely duration of future detention weighs against neither party. Petitioner and Respondents can only speculate on when the proceedings will conclude at this point. Once the immigration judge, the path to removal or release will become clearer. Finally, Petitioner's delay requests resulted in six months of delay during his nine months of detention. Respondents have made no requests for delay. The only days arguably attributable to Respondents are the result of processing Petitioner after his illegal entry and the delays attendant to the scheduling of the first master calendar hearing and the merits hearing.

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

Accordingly, Petitioner is subject to mandatory detention, which does not violate due process. *See Cordova Cordova*, No. 25-cv-2426-BAS-DDL, ECF No. 9 (S.D. Cal. Nov. 14, 2025) (denying similar petition asserting similar claims); *Markov v. LaRose*, No. 25-CV-3811 JLS (SBC), 2026 WL 92069 (S.D. Cal. Jan. 13, 2026) ("Petitioner's length of detention, without more, does not render his detention unreasonable."); *Duran Romero v. LaRose*, No. 25-cv-3567-AGS-VET, ECF No. 7 (S.D. Cal. Jan. 14, 2026); *Shahin v. Noem*, No. 25-cv-2496-AGS-KSC, ECF No. 12 (S.D. Cal. Dec. 23, 2025); *Mendez Ramirez*, 612 F. Supp. 3d at 221; *Gonzalez Aguilar v. Wolf*, 448 F. Supp. 3d at 1212; *de la Rosa Espinoza*, 2020 WL 3452967, at *6-8.

////

////

V. CONCLUSION

For the reasons stated herein, Respondents respectfully request that the Court deny the Petitioner's requests for relief on the merits.

Dated: April 24, 2026

Respectfully submitted,

ADAM GORDON
United States Attorney

s/ Michael D. Wallace
MICHAEL D. WALLACE
Assistant United States Attorney
Attorneys for Respondents