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

10 PALINA DANILCHYK,
Petitioner,

11 v.

12 MARKWAYNE MULLIN,
13 Respondent.

Case No.: 26-cv-02454-RSH-MSB

RESPONSE TO PETITION

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15
16 **I. INTRODUCTION**

17 Petitioner is a native and citizen of Belarus who entered the United States on
18 October 5, 2025, at a time when she did not possess proper documents to legally enter
19 or remain in the United States. She filed the present habeas petition asking the Court to
20 order her release from immigration custody. However, as an arriving alien and applicant
21 for admission, her current detention is mandated by 8 U.S.C. § 1225(b)(2), and the Court
22 should deny her requests for relief accordingly.

23 **II. BACKGROUND**

24 Petitioner is a native and citizen of Belarus who unlawfully entered the United
25 States through the San Ysidro Port of Entry on October 5, 2025. On October 24, 2025,
26 she was issued a Notice to Appear after an asylum officer found that she demonstrated
27 a credible fear of persecution or torture. On April 22, 2026, an immigration judge denied
28 Petitioner's claims for asylum and related relief and ordered her removed from the

1 United States (to Belarus). Petitioner reserved appeal and her appeal, if any, is due by
2 May 22, 2026.

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 This habeas Petition should be denied because Petitioner’s detention is mandated
18 under 8 U.S.C. § 1225(b)(1)(B)(ii) and it has not become unconstitutionally prolonged.

19 a. Petitioner is Subject to Mandatory Detention Under U.S.C. 20 § 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 unless—as occurred
23 here—it has been determined that they have a credible fear of persecution. In such cases,
24 the INA mandates that “the alien *shall be detained* for further consideration of the
25 application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii) (emphasis added); *see also Matter*
26 *of M-S*, 27 I. & N. Dec. 509, 519 (AG 2019) (“all aliens transferred from expedited to
27 full [removal] proceedings after establishing a credible fear are ineligible for bond”).
28 Because Petitioner is an arriving alien found to have a credible fear of persecution and

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

5 Petitioner requests that the Court order her 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 Since Petitioner’s removal proceedings remain pending and she has not been
16 granted temporary parole, section 1225(b)(1)(B) mandates her detention until the
17 proceedings have concluded. *Jennings*, 583 U.S. at 297 (“Once those proceedings end,
18 detention under § 1225(b) must end as well.”). Because Petitioner is lawfully detained
19 under section 1225(b)(1)(B) and the statute does not entitle her to release at this time,
20 her 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 **b. Petitioner’s 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 her 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 her claim that her detention violates the Fifth Amendment’s Due Process Clause
22 and deny her 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 Petitioner’s claim fails *even if* the Court infers a constitutional right against
16 prolonged mandatory detention because the length of her detention has not crossed the
17 threshold that courts have found to be unreasonable. Courts generally “become
18 extremely wary of permitting continued custody absent a bond hearing” once detention
19 continues past a year. *Sibomana v. LaRose*, No. 22-cv-933-LL-NLS, 2023 WL
20 3028093, at *4 (S.D. Cal. April 20, 2023) (citation omitted); *see also Durand v. Allen*,
21 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 *Lopez* factors weigh against finding that Petitioner’s detention is prolonged.
13 First, Petitioner has been detained since October 5, 2025. Courts in this district have
14 found detention for much longer periods to be unreasonably prolonged, but Petitioner’s
15 current detention is not unreasonable. See *Durand v. Allen*, No. 3:23-cv-00279-RBM-
16 BGS, 2024 WL 711607 at *5 (S.D. Cal. Feb. 21, 2024) (32 months); *Sibomana*, 2023
17 WL 3028093, at *4 (19 months); *Sanchez-Rivera*, 2023 WL 139801 at *6 (three years);
18 *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 773 (S.D. Cal. 2020) (27 months); *Yagao*, 2019
19 WL 1429582, at *1 (42 months). Second, the facts do not suggest that the likely duration
20 of future detention weighs in Petitioner’s favor considering her immigration
21 proceedings are moving along as expected and in a timely manner. And finally, there is
22 no indication that the government has caused any delay in the removal proceedings.

23 **V. CONCLUSION**

24 For the reasons stated herein, Respondent respectfully requests that the Court
25 dismiss this habeas Petition.

26 DATED: April 29, 2026

Respectfully submitted,

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28 ADAM GORDON
United States Attorney

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s/ Allie E. Malone
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