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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE DISTRICT OF ARIZONA**

10 Mehrad Asadieidivand,

11 Petitioner,

12 v.

13 Ghulam Rasool, ICE Enforcement and
14 Removal Operations Phoenix Supervisory
15 Detention and Deportation Officer, et al.,

16 Respondents.
17

No. 25-cv-02475-PHX-KML-JFM

**RESPONSE TO PETITION FOR
WRIT OF HABEAS CORPUS,
MOTION FOR BAIL AND MOTION
FOR LIMITED DISCOVERY**

18 **INTRODUCTION**

19
20 Respondents Ghulam Rasool, ICE Enforcement and Removal Operations Phoenix
21 Supervisory Detention and Deportation Officer, Justin Smith, ICE Enforcement and
22 Removal Operations Phoenix Field Office Director, John Cantu, ICE Enforcement and
23 Removal Operations Phoenix Field Office Director, Marcos Charles, ICE Acting Executive
24 Associate Director, Pamela J. Bondi, Attorney General of the United States and Kristi
25 Noem, Secretary of the Department of Homeland Security, by and through counsel,
26 respond to the Petition for Writ of Habeas Corpus (Doc. 1), Motion for Bail Pending
27 Adjudication of Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241 (Doc. 2), and
28 the Motion for Limited Discovery in Support of Petition for Writ of Habeas Corpus Under

1 28 U.S.C. § 2241 (Doc. 3). The Court should deny the habeas petition and related motions.

2 Petitioner has been detained since May 31, 2025 and is currently subject to an order
3 of Expedited Removal. (Doc. 1-4). He seeks a Court order (1) directing ICE to release him
4 on bail from immigration detention (Doc. 2) and (2) order Respondents to provide the
5 discovery outlined in his Motion for Limited Discovery. (Doc. 3). Because Petitioner is an
6 arriving alien and subject to expedited removal proceedings and mandatory detention, he
7 is not eligible for bail or release. His habeas petition and motion for bail should be denied.
8 Furthermore, because discovery is generally not permitted in habeas cases, and because
9 Petitioner has failed to establish good cause exists to permit discovery, the Court should
10 deny the request for limited discovery. This Response is supported by the following
11 Memorandum of Points and Authorities.

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 **I. FACTUAL AND PROCEDURAL BACKGROUND**

14 On May 22, 2022, Petitioner presented himself to a Customs and Border Protection
15 Officer (CBPO) at “the pedestrian turnstile at Calexico West Port of Entry.” (Doc. 1, ¶ 22;
16 Doc. 1-4, p. 2). Petitioner was an arriving alien found inadmissible. (Doc. 1-4, p. 2). As an
17 arriving alien, he was subject to expedited removal proceedings and mandatory detention.
18 (*Id.*; see 8 U.S.C. § 1225(b)). ICE declined to grant parole because he failed to establish
19 his identity to the satisfaction of ICE and did not establish that he was not a flight risk.
20 (Doc. 1-5). ICE mistakenly released Petitioner on bond because they incorrectly thought
21 he was detained under 8 U.S.C. § 1226(a)¹. (Doc. 1-7; Doc. 1-8 ¶ 7a-b). However, they
22 canceled the bond on June 9, 2025. (Doc. 1-9).

23 Petitioner underwent a credible fear interview on June 15, 2022. He was referred to
24 the immigration judge (IJ) and filed an application for asylum, withholding of removal and
25 protection under the Convention Against Torture (“CAT”) (Form I-589). (Doc. 1-3). He is
26 currently scheduled for an IJ merits hearing on August 26, 2025 on his applications for
27

28 ¹ Section 236 of the Immigration and Nationality Act (“INA”) is codified as 8 U.S.C. § 1226.

1 relief from removal. (*See* Exhibit A).

2 **II. PETITIONER IS SUBJECT TO MANDATORY DETENTION WITHOUT**
3 **BOND WHICH COMPORTS WITH HIS DUE PROCESS RIGHTS.**

4 As an initial matter, the INA does not provide for bail in civil immigration detention.
5 To the extent it provides for bond, it does so only in limited circumstances, which do not
6 apply here. Here, Petitioner is an inadmissible arriving alien in expedited removal
7 proceedings and is therefore subject to mandatory detention without bond pursuant to 8
8 U.S.C. § 1225(b). *See Jennings v. Rodriguez*, 583 U.S. 281, 287-288 (2018) U.S. The
9 Supreme Court has held that mandatory detention without bond under 8 U.S.C. § 1225(b)
10 comports with the due process requirements of the Fifth Amendment. *Department of*
11 *Homeland Security v. Thuraissigiam*, 591 U.S. 103 (2020). Accordingly, Petitioner is not
12 entitled to bail in this context and his request should be denied. Likewise, because his
13 continued detention is statutorily mandated and constitutionally permitted, his habeas
14 petition should be denied.

15 An arriving alien is defined as:

16 [A]n applicant for admission coming or attempting to come into the
17 United States at a port-of-entry, or an alien seeking transit through the
18 United States at a port-of-entry, or an alien interdicted in international
19 or United States waters and brought into the United States by any
20 means, whether or not to a designated port-of-entry, and regardless of
the means of transport.

21 8 C.F.R. § 1.2.

22 Here, Petitioner is an arriving alien subject to mandatory detention under 8 U.S.C.
23 § 1225(b), and that detention throughout the remainder of his proceedings is lawful.
24 Petitioner is currently in expedited removal proceedings. Noncitizens in pre-final-removal-
25 order civil immigration detention generally fall within two categories: 8 U.S.C. § 1225,
26 which consists of noncitizens seeking an initial entry, and 8 U.S.C. § 1226, which consists
27 of noncitizens who entered the United States. Petitioner falls under 8 U.S.C. § 1225
28 because he was found to be an inadmissible arriving alien subject to expedited removal
proceedings. (Doc. 1-4). The difference between the noncitizens in these two categories is

1 significant for due process purposes. *See Thuraissigiam*, 591 U.S. at 106–07, 138–40;
2 *Mendoza-Linares v. Garland*, 51 F.4th 1146, 1148 (9th Cir. 2022) (noting the “unique
3 constitutional status of arriving aliens with no ties to the United States”).

4 The Supreme Court considered whether 8 U.S.C. § 1225(b) imposes a time-limit on
5 the length of detention and whether such noncitizens detained under this statutory authority
6 have a statutory right to a bond hearing. *See Jennings*, 583 U.S. at 296–303. The Supreme
7 Court held that “nothing in the statutory text [of 8 U.S.C. § 1225(b)] imposes any limit on
8 the length of detention” nor “says anything whatsoever about bond hearings.” *Id.* at 297.
9 The sole means of release for noncitizens detained pursuant to 8 U.S.C. § 1225(b) is
10 temporary parole at the discretion of DHS under 8 U.S.C. § 1182(d)(5). *Id.* at 300.

11 Understanding the statutory interpretation of 8 U.S.C. § 1225(b) and the rights it
12 affords to “arriving aliens” like Petitioner, is critical because, for “more than a century”
13 now, the Supreme Court has held that the rights of such noncitizens are confined
14 exclusively to those granted by Congress. *See Thuraissigiam*, 591 U.S. at 131; *see also*
15 *Nishimura Ekiu*, 142 U.S. 651, 660 (1892) (holding that with regard to “foreigners who
16 have never been naturalized, nor acquired any domicile or residence within the United
17 States, nor even been admitted into the country pursuant to law,” “the decisions of
18 executive or administrative officers, acting within powers expressly conferred by
19 Congress, are due process of law.”); *Landon*, 459 U.S. at 32 (“This Court has long held
20 that an alien seeking initial admission to the United States requests a privilege and has no
21 constitutional rights regarding his application, for the power to admit or exclude aliens is a
22 sovereign prerogative”); *Shaugnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212
23 (1953) (rejecting noncitizens’ habeas petitions premised on their claim that their detention
24 without a bond hearing violated their Fifth Amendment Due Process rights because “an
25 alien on the threshold of initial entry stands on a different footing: ‘Whatever the procedure
26 authorized by Congress is, it is due process as far as an alien denied entry is concerned.’”).

27 The Supreme Court’s holding on this topic was reinforced most recently in
28 *Thuraissigiam*, a habeas action involving a noncitizen, like Petitioner, seeking initial entry

1 to the United States and detained under 8 U.S.C. § 1225(b) who raised a Fifth Amendment
2 Due Process Clause challenge. 591 U.S. 106–07. Therein, the Supreme Court “reiterated
3 th[e] important rule,” *id.* at 138, that a noncitizen seeking initial entry to the United States
4 “has no entitlement” to any legal rights, constitutional or otherwise, other than those
5 expressly provided by statute. *Id.* at 107 (“Congress is entitled to set the conditions for an
6 alien’s lawful entry into this country and [] as a result [] an alien at the threshold of initial
7 entry cannot claim any greater rights under the Due Process Clause.”); *id.* (holding that a
8 noncitizen seeking initial entry “has no entitlement to procedural rights other than those
9 afforded by statute”); *id.* at 140 (A noncitizen seeking initial entry to the United States “has
10 only those rights regarding admission that Congress has provided by statute” and “the Due
11 Process Clause provides nothing more[.]”).

12 More broadly, the Supreme Court has long recognized that the political branches’
13 broad power over immigration is “at its zenith at the international border.” *United States v.*
14 *Flores-Montano*, 541 U.S. 149, 152–53 (2004). The power to admit or exclude aliens is a
15 sovereign prerogative vested in the political branches, and “it is not within the province of
16 any court, unless expressly authorized by law, to review [that] determination.” *United*
17 *States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 543 (1950); *see also Kleindienst v.*
18 *Mandel*, 408 U.S. 753, 765–66 n.6 (1972) (noting that the Supreme Court’s “general
19 reaffirmations” of the political branches’ exclusive authority to admit or exclude aliens
20 “have been legion”). Control of the Nation’s borders is vested in the political branches
21 because that authority is “vitally and intricately interwoven with contemporaneous policies
22 in regard to the conduct of foreign relations,” matters “exclusively entrusted to the political
23 branches of government.” *Harisiades v. Shaughnessy*, 342 U.S. 580, 588–89 (1952).
24 Preserving the political branches’ authority to control the border serves “the obvious
25 necessity that the Nation speak with one voice” on such matters. *Zadvydas v. Davis*, 533
26 U.S. 678, 711 (2001).

27 In addition to the sovereign, largely unreviewable prerogative of Congress and the
28 Executive to admit or exclude aliens, *see Knauff*, 338 U.S. at 543 (1950), the Supreme

1 Court also has recognized that aliens seeking admission to the United States do not have
2 the same constitutional protections as individuals who have entered the United States.
3 “[O]ur immigration laws have long made a distinction between those aliens who have come
4 to our shores seeking admission . . . and those who are within the United States after an
5 entry, irrespective of its legality. In the latter instance, the Court has recognized additional
6 rights and privileges not extended to those in the former category who are merely ‘on the
7 threshold of initial entry.’” *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958) (quoting
8 *Mezei*, 345 U.S. at 212). Accordingly, Congress may authorize the detention of aliens at
9 the border, even for prolonged periods of time, and such detention does not deprive aliens
10 “of any statutory or constitutional right.” *See Mezei*, 345 U.S. at 212 (upholding detention
11 of lawful permanent resident returning from trip abroad detained for over a year and a half).

12 Here, as an arriving alien, Petitioner has no due process protections beyond those
13 afforded by statute. *See United States v. Verdugo-Urquidez*, 494 U.S. 259, 270-71 (1990)
14 (Aliens “receive constitutional protections when they have come within the territory of the
15 United States and developed substantial connections with this country.”); *Landon*, 459 U.S.
16 at 32 (“[A]n alien seeking initial admission to the United States requests a privilege and
17 has no constitutional rights regarding his application.”); *Mezei*, 345 U.S. at 212 (“[A]n
18 alien on the threshold of initial entry stands on a different footing: ‘Whatever the procedure
19 authorized by Congress is, it is due process as far as an alien denied entry is concerned.’”);
20 *Thuraissigiam*, 591 U.S. at 131. Here, Petitioner received all of the protections allowed by
21 the relevant statutes. Finally, because Petitioner was mandatorily detained under 8 U.S.C.
22 § 1225(b), even an immigration judge lacks jurisdiction to grant bond. 8 C.F.R.
23 1003.19(h)(2)(i)(B).

24 Although Petitioner was released on bond on August 3, 2022 (Doc. 1-7), this action
25 was taken in error and Petitioner’s bond was cancelled on June 9, 2025. (Doc. 1-9).
26 Although bond is discretionary under 8 U.S.C. § 1226(a), Petitioner was detained under 8
27 U.S.C. § 1225(b) and, after discovering this error, Petitioner’s bond was properly revoked
28 because he is subject to mandatory detention. Petitioner is not eligible for bond and his

1 only avenue for release is through discretionary parole. *See* 8 USC § 1182(d)(5)(A).

2 Furthermore, the applicable statutory and regulatory provisions regarding
3 humanitarian parole vest full discretion for humanitarian parole in the Attorney General,
4 the Secretary of the Department of Homeland Security (“DHS”), and various DHS
5 officials. *See* 8 U.S.C. § 1182(d)(5)(A) (“The Attorney General may . . . in his discretion
6 parole into the United States temporarily under such conditions as he may prescribe only
7 on a case-by-case basis for urgent humanitarian reasons or significant public benefit any
8 alien applying for admission to the United States. . . .”); *see also* 8 C.F.R. § 212.5(a). This
9 is precisely the type of discretionary decision that the district court is precluded from
10 reviewing pursuant to 8 U.S.C. § 1252(a)(2)(B). *See United States v. Leal-Del Carmen*,
11 697 F.3d 964, 975 (9th Cir. 2012) (“[T]he federal government had exclusive authority to
12 parole [an alien lacking a lawful immigration status] into the country . . .” (citing 8 U.S.C.
13 § 1182(d)(5)(A)); *Hassan v. Chertoff*, 593 F.3d 785, 789-90 (9th Cir. 2008) (whether to
14 grant or revoke parole is decided by the Attorney General or certain DHS officials); *Acosta*
15 *v. United States*, No. C14-420 RSM, 2014 WL 2216105, at *4 n.1 (W.D. Wash. May 29,
16 2014) (court lacked authority to grant parole under 8 U.S.C. § 1182(d)(5)(A)); *United*
17 *States v. Li*, No. CV-12-482-PHX-DGC, 2013 WL 6729895, at *2 (D. Ariz. Dec. 19, 2013)
18 (there is no authority under which the court could compel the Attorney General to grant
19 humanitarian parole); *Torres v. Barr*, 976 F.3d 918, 931 (9th Cir. 2020) (“Neither we nor
20 the agency has jurisdiction over [the decision to grant or deny parole.]”); *Rodriguez v.*
21 *Robbins*, 715 F.3d 1127, 1144 (9th Cir. 2013) (“The parole process is purely discretionary
22 and its results are unreviewable . . .”). Therefore, the Court does not have jurisdiction to
23 grant Petitioner the parole he seeks—which is the only form of release he can obtain as an
24 arriving alien subject to mandatory detention under section 1225(b).

25 Because Petitioner is subject to mandatory detention without bond under the statute,
26 and because the Supreme Court has held that such detention comports with due process for
27 those subject to 8 U.S.C. § 1225(b), the Court should deny bail and deny the habeas
28 petition. *Thuraissigiam*, 591 U.S. at 131. The only release Petitioner is eligible for is parole,

1 and this Court lacks jurisdiction to order Petitioner's parole into the United States.

2 **III. LIMITED DISCOVERY IS NOT WARRANTED.**

3 A habeas petitioner is not entitled to discovery "as a matter of ordinary course."
4 *Bracy v. Gramley*, 520 U.S. 899, 904, (1997); *see Campbell v. Blodgett*, 982 F.2d 1356,
5 1358 (9th Cir. 1993). Indeed, there is no general right to discovery in habeas proceedings.
6 *See Campbell v. Blodgett*, 982 F.2d 1356, 1358 (9th Cir.1993). A court considering a
7 habeas corpus petition is ordinarily limited to the record before it. *See Cullen v. Pinholster*,
8 563 U.S. 170, 180 (2011). Rather, Rule 6 of the Rules Governing Section 2254 Cases
9 provides that "[a] judge may, for good cause, authorize a party to conduct discovery under
10 the Federal Rules of Civil Procedure and may limit the extent of discovery." Rule 6(a),
11 Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254.

12 Whether a petitioner has established "good cause" for discovery requires a habeas
13 court to determine the essential elements of the petitioner's substantive claim and evaluate
14 whether "specific allegations before the court show reason to believe that the petitioner
15 may, if the facts are fully developed, be able to demonstrate that he is...entitled to relief."
16 *Bracy*, 520 U.S. at 908–09. Conversely, good cause "cannot arise from mere speculation"
17 and "cannot be ordered on the basis of pure hypothesis[.]" *Arthur v. Allen*, 459 F.3d 1310,
18 1311 (11th Cir. 2006); *see also Farrow v. United States*, 580 F.2d 1339, 1360 (9th Cir.
19 1978) (denying further discovery because appellant failed to present more than conclusory
20 allegations).

21 Here, Petitioner requests three categories of records: (1) Petitioner's Alien File (A-
22 File); (2) communications regarding Petitioner's arrest; and (3) communications regarding
23 the arrest of Iranian noncitizens near the time of Petitioner's arrest. (Doc. 3, pp. 3-4).
24 Essentially, he argues that this discovery will "enable him to fully develop his claims for
25 relief, by confirming and detailing Respondents' motivations and justifications for
26 revoking his release, and for subsequently refusing to parole or otherwise release him from
27 detention." (*Id.* at p. 3). Because petitioner was initially granted bond in error and, because
28 he is subject to mandatory detention, the requested discovery is not likely to resolve any

1 legally relevant issues. None of the documents requested can establish that Petitioner is
2 entitled to bail or release because he is subject to mandatory detention without bond which
3 the Supreme Court has held does not violate due process. Additionally, the Court lacks
4 jurisdiction to grant Petitioner release through parole into the United States, the only
5 vehicle for release he is eligible for. Accordingly, discovery could not produce any
6 evidence that would allow Petitioner to succeed on the merits of his habeas petition or
7 motion for bail. Accordingly, Petitioner simply cannot establish that good cause exists for
8 discovery in this case. As the Ninth Circuit Court of Appeals has cautioned, courts “should
9 not allow prisoners to use federal discovery for fishing expeditions to investigate mere
10 speculation.” *Calderon v. U.S. Dist. Court for the Northern Dist. of California*, 98 F.3d
11 1102, 1106 (9th Cir. 1996). For these reasons, there is no good cause for discovery and
12 Respondents respectfully request this court deny Petitioner’s Motion for Limited
13 Discovery.

14 For all these reasons the Court should deny the Petition for Writ of Habeas Corpus,
15 Motion for Bail, and Motion for Limited Discovery.

16 RESPECTFULLY SUBMITTED July 31, 2025.

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