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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RAKHAT BAISHYMYROV,

Petitioner,

v.

WARDEN OF THE GOLDEN STATE
ANNEX DETENTION FACILITY, et al.,¹

Respondents.

CASE NO. 1:25-cv-01658-WBS-DMC

RESPONSE TO PETITION FOR WRIT OF
HABEAS CORPUS

Petitioner has been constitutionally detained in connection with his removal proceedings since he presented himself at the Otay Mesa port of entry in December 2024. Based on his status as an applicant for admission, he is ineligible for release. *See* 8 U.S.C. § 1225(b)(2)(A). Because his mandatory detention continues to serve legitimate congressionally mandated goals with a definite end in sight, it does not violate the Due Process Clause of the Fifth Amendment, and his petition should be dismissed.

I. BACKGROUND

Petitioner is a native and citizen of Kazakhstan. (ECF 1, ¶ 23.) He arrived at the Otay Mesa port

¹ Respondent moves to strike and dismiss all unlawfully named officials under § 2241. A petitioner seeking habeas corpus relief may only name the officer having custody of him as the respondent to the petition. 28 U.S.C. § 2242; *Rumsfeld v. Padilla*, 542 U.S. 426, 430 (2004); *Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 894 (9th Cir. 1996); *Doe v. Garland*, 109 F.4th 1188, 1197 (9th Cir. 2024) (holding, among other things, that the warden of the private detention facility at which a non-citizen alien was held was the proper § 2241 respondent). Here, Petitioner's custodian was the facility administrator at the Golden State Annex located in McFarland, California.

1 of entry without valid entry documents on or about December 18, 2024. (ECF 1, ¶ 19.) He was issued a
 2 notice and order of expedited removal. Since his arrival, he has been detained pending his immigration
 3 removal proceedings. (ECF 1, ¶ 18.) He is currently detained at the Golden State Annex Facility. (ECF
 4 1, ¶ 6.) Because Petitioner is an “applicant for admission” under 8 U.S.C. § 1225, he is subject to
 5 mandatory custody. *See* 8 U.S.C. § 1225(b)(2)(A).

6 Petitioner filed his habeas petition on November 26, 2025, after being detained for about 11
 7 months. (ECF 1.) He claims that he has been subject to prolonged detention and that, to justify any
 8 further detention, due process requires the government to establish at a bond hearing clear and
 9 convincing evidence of flight risk or danger. (ECF 1, ¶ 48.) He asks this Court to order his outright
 10 release or, in the alternative, to order a bond hearing before an immigration judge within 30 days. (ECF
 11 1, p. 17.) On December 4, 2025, the Court ordered Respondents to file a response to the petition. (ECF
 12 3.)

13 II. RELEVANT STATUTES

14 A. Detention under 8 U.S.C. § 1225

15 Section 1225 applies to “applicants for admission,” who are defined as “alien[s] present in the
 16 United States who [have] not been admitted” or “who arrive[] in the United States.” 8 U.S.C.
 17 § 1225(a)(1). Applicants for admission “fall into one of two categories, those covered by § 1225(b)(1)
 18 and those covered by § 1225(b)(2).” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

19 Section 1225(b)(1) applies to arriving aliens and “certain other” aliens “initially determined to be
 20 inadmissible due to fraud, misrepresentation, or lack of valid documentation.” *Id.*; 8 U.S.C.

21 § 1225(b)(1)(A)(i), (iii). These aliens generally are subject to expedited removal proceedings. *See* 8
 22 U.S.C. § 1225(b)(1)(A)(i). But if the alien “indicates an intention to apply for asylum . . . or a fear of
 23 persecution,” immigration officers will refer the alien for a credible fear interview. 8 U.S.C.

24 § 1225(b)(1)(A)(ii). An alien “with a credible fear of persecution” is “detained for further consideration
 25 of the application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to
 26 apply for asylum, express a fear of persecution, or is “found not to have such a fear,” he is detained until
 27 removed. 8 U.S.C. §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

28 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583 U.S. at 287.

1 It “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.* Under § 1225(b)(2), an alien
 2 “who is an applicant for admission” shall be detained for a removal proceeding “if the examining
 3 immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt
 4 entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A); *see Pena v. Hyde*, 2025 WL 2108913, at *1 (D.
 5 Mass. July 28, 2025) (“[§ 1225] authorizes the detention of any alien who 1) is ‘an applicant for
 6 admission’ to the country and 2) is ‘not clearly and beyond doubt entitled to be admitted.’” (citing 8
 7 U.S.C. § 1225(b)(2)(A)); *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“[F]or aliens arriving in
 8 and seeking admission into the United States who are placed directly in full removal proceedings,
 9 section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention ‘until removal
 10 proceedings have concluded.’”) (citing *Jennings*, 583 U.S. at 299). Still, the Department of Homeland
 11 Security (“DHS”) has the sole discretionary authority to temporarily release on parole “any alien
 12 applying for admission to the United States” on a “case-by-case basis for urgent humanitarian reasons or
 13 significant public benefit.” 8 U.S.C. § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

14 III. ARGUMENT

15 A. The Supreme Court has upheld the constitutionality of mandatory detention for 16 certain aliens while their removal proceedings are pending.

17 Petitioner is currently detained under 8 U.S.C. § 1225(b)(1) while his removal proceedings are
 18 pending. This is not a case where detention is indefinite. Rather, detention under § 1225(b)(1), like
 19 detention under § 1226(c), “has a definite termination point: the conclusion of removal proceedings.”
 20 *Jennings v. Rodriguez*, 583 U.S. 281, 304 (2018) (internal quotation marks and citation omitted).

21 The Supreme Court has long held that “the Government may constitutionally detain deportable
 22 aliens during the limited period necessary for their removal proceedings.” *Demore v. Kim*, 538 U.S.
 23 510, 526 (2003) (describing this conclusion as the Court’s “longstanding view”). In *Demore*, the Court
 24 upheld the constitutionality of a similar mandatory detention provision—8 U.S.C. § 1226(c), which
 25 mandates the detention during removal proceedings of aliens who have been convicted of an aggravated
 26 felony. *Id.* at 513. In reaching this holding, the Court explained that “[i]n the exercise of its broad
 27 power over naturalization and immigration, Congress regularly makes rules that would be unacceptable
 28 if applied to citizens.” *Id.* at 521. The Court noted that, for over a century, it has “recognized detention

1 during deportation proceedings as a constitutionally valid aspect of the deportation process” because
 2 “deportation proceedings ‘would be vain if those accused could not be held in custody pending the
 3 inquiry into their true character.’” *Id.* at 523 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235
 4 (1896)).

5 Based on this established principle, the Court in *Demore* reaffirmed that immigration detention
 6 can be constitutional even in the absence of any showing that an individual detainee posed a flight risk
 7 or a danger to the community. *See id.* at 523-27 (discussing *Carlson v. Landon*, 342 U.S. 524 (1952),
 8 and concluding that detention was constitutional “even without any finding of flight risk” or
 9 “individualized finding of likely future dangerousness” (quotation marks omitted)). In short, in *Demore*
 10 “the Supreme Court recognized [that] there is little question that the civil detention of aliens during
 11 removal proceedings can serve a legitimate government purpose, which is ‘preventing deportable ...
 12 aliens from fleeing prior to or during their removal proceedings, thus increasing the chance that, if
 13 ordered removed, the aliens will be successfully removed.’” *Prieto-Romero v. Clark*, 534 F.3d 1053,
 14 1065 (9th Cir. 2008) (quoting *Demore*, 538 U.S. at 528).

15 Based on the reasoning of *Demore*, mandatory detention under 8 U.S.C. § 1225(b)(1) is facially
 16 constitutional for the same reasons as is mandatory detention under § 1226(c). In sum, Petitioner’s
 17 detention is proper under § 1225(b)(2)(A), because he is an applicant for admission who is not “clearly
 18 and beyond doubt” entitled to admission. *See Pena*, 2025 WL 2108913, at *1 (D. Mass. July 28, 2025)
 19 (“[§ 1225] authorizes the detention of any alien who 1) is ‘an applicant for admission’ to the country and
 20 2) is ‘not clearly and beyond doubt entitled to be admitted.’” (citing 8 U.S.C. § 1225(b)(2)(A)).²

21 **B. Petitioner is not entitled to outright release. Nor is he entitled to a bond hearing, at**
 22 **which the government must bear the burden of establishing his dangerousness and**
 23 **flight risk by clear and convincing evidence.**

24 “[C]ompelled release of detainees is surely a remedy of last resort.” *Fraihat v. U.S. Immigr. &*
 25 *Customs Enf’t*, 16 F.4th 613, 642 (9th Cir. 2021). In the event that the petition is granted, the only
 26 appropriate relief is a bond hearing, not release from detention. *See, e.g., Demore*, 538 U.S. at 532
 27 (Kennedy, J., concurring) (explaining that “an individualized determination as to his risk of flight and

28 ² Respondents acknowledge that multiple district courts have disagreed with their interpretation
 of § 1225 as relevant here. *See Romero v. Hyde*, 2025 WL 2403827 (D. Mass. August 19, 2025)
 (collecting cases).

1 dangerousness” would be the proper remedy “if the continued detention became unreasonable or
2 unjustified”); *Prieto-Romero*, 534 F.3d at 1065-66 (rejecting a claim that a bond hearing where
3 petitioner bore the burden of proving that he was not a flight risk or danger to the community was
4 constitutionally inadequate, where the petitioner “had an opportunity to contest the necessity of his
5 detention before a neutral decisionmaker and an opportunity to appeal that determination to the BIA”).
6 Moreover, immigration judges, not district courts, are the proper decision-makers in any immigration
7 bond hearings. *See, e.g., Mansoor v. Figueroa*, No. 3:17-cv-01695-GPC (NLS), 2018 WL 840253, at *4
8 (S.D. Cal. Feb. 13, 2018) (explaining that immigration judges are well suited to assess eligibility for
9 release, while a district court “lacks the factual support to make a determination about Petitioner’s risk
10 of flight or dangerousness to the community”).

11 Should the Court order a bond hearing, Petitioner is mistaken that the burden should be on the
12 government to justify his detention by clear and convincing evidence. The Constitution does not require
13 the government to bear the burden of establishing that the noncitizen will be a flight risk or danger—
14 much less that the government be subject to a clear-and-convincing-evidence standard—to justify
15 temporary detention pending removal proceedings. The Supreme Court has consistently affirmed the
16 constitutionality of detention pending removal proceedings, notwithstanding that the government has
17 never borne the burden to justify that detention by clear and convincing evidence. *See Demore*, 538
18 U.S. at 531; *Reno v. Flores*, 507 U.S. 292, 305-09 (1993); *Carlson*, 342 U.S. at 538; *Zadvydas*, 533 U.S.
19 at 701. In fact, the Supreme Court has repeatedly upheld detention pending removal proceedings on the
20 basis of a categorical, rather than individualized, assessment that a valid immigration purpose warranted
21 interim custody. *See Demore*, 538 U.S. at 531; *Flores*, 507 U.S. at 305-09; *Carlson*, 342 U.S. at 538.
22 And in *Zadvydas*, the Court placed the burden on the noncitizen, not the government, to show that his
23 detention was unjustified. *Zadvydas*, 533 U.S. at 701 (noncitizen must first “provide[] good reason to
24 believe that there is no significant likelihood of removal in the reasonably foreseeable future,” only after
25 which “the Government must respond with evidence sufficient to rebut that showing”).

26 Indeed, the Ninth Circuit questioned (in the § 1226(a) context) how the burden-shifting and
27 standard of proof that Petitioner demands could be constitutionally required:

28 Nothing in this record suggests that placing the burden of proof on the government was
constitutionally necessary to minimize the risk of error, much less that such burden-

1 shifting would be constitutionally necessary in all, most, or many cases. There is no
2 reason to believe that, as a general proposition, the government will invariably have more
3 evidence than the alien on most issues bearing on alleged lack of future dangerousness or
4 flight risk.

5 *Rodriguez Diaz*, 53 F.4th at 1212 (9th Cir. 2022). Accordingly, if the Court grants Petitioner a
6 bond hearing, the burden at any such bond hearing is properly placed on him.

7 **IV. CONCLUSION**

8 This Court should deny the petition because Petitioner's detention under § 1225(b)(2)(A) is
9 constitutionally permitted.

10 Dated: December 9, 2025

Respectfully submitted,

11 ERIC GRANT
12 United States Attorney

13 /s/ ELLIOT WONG
14 ELLIOT WONG
15 Assistant United States Attorney
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CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Eastern District of California and is a person of such age and discretion to be competent to serve papers; that on December 9, 2025, she served a copy of the RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and its contents in the United States Mail at Sacramento, California.

Addressee: Rakhat Baishymyrov

Golden State Annex
611 Frontage Road
McFarland, CA 93250

/s/ D. WEISS

D. WEISS