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7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 ROLAND MBEPDEM TONGWA,

12 Petitioner,

13 v.
14

15 MARKWAYNE MULLIN, *et al.*,

16 Respondents.
17
18

Case No. 26-cv-2345-BJC-GC

RETURN TO PETITION FOR WRIT
OF HABEAS CORPUS

19
20 I. INTRODUCTION

21 Petitioner requests the Court to order his immediate release from Immigration
22 and Customs Enforcement (ICE) custody or require that he be afforded a bond hearing.
23 As an arriving alien pending a credible fear of persecution, however, Petitioner's
24 detention is mandated by 8 U.S.C. § 1225(b)(1)(B)(i) until a credible fear
25 determination. As Petitioner is subject to mandatory detention under 8 U.S.C. §
26 1225(b)(1)(B)(i), the Court should deny Petitioner's requests for relief.
27
28

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a native and citizen of Cameroon, who entered the United States, after previously leaving the United States, at the San Ysidro Port of Entry in a vehicle on February 9, 2026. Exhibit (Ex.)1 (Form I-213).¹ He was determined to be an arriving alien inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I), placed into expedited removal proceedings under 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). *Id.* An expedited removal order issued the same day. Ex. 2 (Expedited Removal Order). A month later, on March 7, 2026, Petitioner claimed fear of persecution. *Id.* Petitioner has been referred for a credible fear interview by an asylum officer pursuant to 8 U.S.C. § 1225(b)(1)(B). Petitioner remains in expedited removal proceedings pending a credible fear determination and is mandatorily detained pursuant to 8 U.S.C. § 1225(b)(1).

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).

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.

1 “If the officer determines at the time of the interview that [the] alien has a credible fear
 2 of persecution . . . , the alien *shall be detained* for further consideration of the
 3 application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii) (emphasis added). If the alien
 4 does not indicate an intent to apply for asylum, does not express a fear of persecution,
 5 or is “found not to have such a fear,” they “shall be detained . . . until removed” from
 6 the United States. 8 U.S.C. §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

7 IV. ARGUMENT

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

9 Even if the Court assumed jurisdiction to review Petitioner’s claim, the Court
 10 must deny his habeas petition because Petitioner’s detention is statutorily mandated
 11 under 8 U.S.C. § 1225(b)(1)(B)(ii) and has not been unconstitutionally prolonged.

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

13 Petitioner is an arriving alien. Ex. 1. As discussed above, arriving aliens are
 14 applicants for admission who are subject to expedited removal proceedings, *see* 28
 15 U.S.C. § 1225(b)(1)(A)(i). Petitioner requests that the Court order his release from ICE
 16 custody. But the Supreme Court has rejected such contention, explaining: “Read most
 17 naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission
 18 until certain proceedings have concluded. . . . Nothing in the statutory text imposes any
 19 limit on the length of detention. And neither § 1225(b)(1) nor § 1225(b)(2) says
 20 anything whatsoever about bond hearings.” *Jennings*, 583 U.S. at 297. Except for
 21 temporary parole granted at the discretion of the Attorney General “for urgent
 22 humanitarian reasons or significant public benefit” under 8 U.S.C. § 1182(d)(5), “there
 23 are no *other* circumstances under which aliens detained under § 1225(b) may be
 24 released.” *Id.* at 300 (emphasis in original).

25 As Petitioner’s credible fear interview is pending, and he has not been granted
 26 temporary parole, section 1225(b)(1)(B) mandates his detention. If he is found to have
 27 a credible fear by an asylum officer or an immigration judge, Petitioner will still be
 28 subject to mandatory detention until his removal proceedings have concluded. *Jennings*,

1 583 U.S. at 297 (“Once those proceedings end, detention under § 1225(b) must end as
2 well.”). Because Petitioner is lawfully detained under section 1225(b)(1)(B) and the
3 statute does not entitle him to release at this time, his petition must be denied. *See, e.g.,*
4 *Zelaya-Gonzalez v. Matuszewski*, No. 23-CV-151 JLS-KSC, 2023 WL 3103811, at
5 *3 (S.D. Cal. April 25, 2023) (applying *Jennings* to find that the petitioner had no right
6 to release or a bond hearing).

7 **2. Petitioner’s detention is not unconstitutionally prolonged.**

8 In *Jennings*, the Supreme Court evaluated the proper interpretation of 8 U.S.C.
9 § 1225(b). The Supreme Court stated that, “[r]ead most naturally, [8 U.S.C.]
10 §§ 1225(b)(1) and (b)(2) . . . mandate detention of applicants for admission until certain
11 proceedings have concluded.” *Id.* at 297. In other words, neither 8 U.S.C. § 1225(b)(1)
12 nor § 1225(b)(2) “impose[] any limit on the length of detention” and “neither
13 § 1225(b)(1) nor § 1225(b)(2) say[] anything whatsoever about bond hearings.” *Id.* The
14 Supreme Court added that the sole means of release for noncitizens detained pursuant
15 to 8 U.S.C. §§ 1225(b)(1) or (b)(2) prior to removal from the United States is temporary
16 parole at the discretion of the Attorney General under 8 U.S.C. § 1182(d)(5). *Id.* at 300
17 (“That express exception to detention implies that there are no *other* circumstances
18 under which aliens detained under [8 U.S.C.] § 1225(b) may be released.”) (emphasis
19 in original). “In sum, [8 U.S.C.] §§ 1225(b)(1) and (b)(2) mandate detention of aliens
20 throughout the completion of applicable proceedings[.]” *Id.* at 302.

21 In *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 207–09 (1953), a
22 noncitizen in exclusion proceedings filed a habeas petition claiming that his prolonged
23 detention without a hearing violated his constitutional rights. The Supreme Court
24 rejected the petition, concluding that the noncitizen’s continued detention did not
25 deprive him of any due process rights, stating: “[A]n alien on the threshold of initial
26 entry stands on a different footing: ‘Whatever the procedure authorized by Congress
27 is, it is due process as far as an alien denied entry is concerned.’” *Id.* at 212 (citation
28 omitted). “*Mezei* therefore suggests that the Court found that excludable aliens simply

1 enjoy no constitutional right to be paroled into the United States, even if the only
2 alternative is prolonged detention.” *Barrera-Echavarria v. Rinson*, 44 F.3d 1441, 1450
3 (9th Cir. 1995) (en banc), *superseded by statute as stated in Xi v. INS*, 298 F.3d 832
4 (9th Cir. 2002). That is, “Supreme Court precedent squarely precludes a conclusion
5 that [excludable aliens] have a constitutional right to be free from detention, even for
6 an extended time.” *Id.* at 1449. *Barrera-Echavarria*’s application—at least as it relates
7 to arriving aliens—has never been overruled. The Ninth Circuit continues to cite
8 *Barrera-Echavarria*’s due process (i.e., non-statutory) analysis. *See Llamas-Lopez v.*
9 *Barr*, 825 F. App’x 523, 524 (Mem.) (9th Cir. 2020); *Angov v. Lynch*, 788 F.3d 893,
10 898 (9th Cir. 2015) (Angov’s “claim of a procedural due process violation simply can’t
11 be squared with the Supreme Court’s teachings in *Mezei*” and “our circuit’s settled
12 precedent”).

13 A district court within this Circuit provided a thorough summary of “the law of
14 the Ninth Circuit as it currently stands [including *Barrera-Echavarria*, and its
15 treatment by *Rodriguez II*, *Rodriguez III*, and *Rodriguez V*],” in *Ibarra-Perez v.*
16 *Howard*, 468 F. Supp. 3d 1156, 1177 (D. Arizona 2020). The court there reasoned that
17 “Respondents have the better side of this argument” and rejected the notion that an
18 arriving alien detained under § 1225(b) was entitled to a bond hearing, because it “must
19 do its best to discern and apply the law[.]” The above must be true because *Mezei* “is
20 still good law.” *See Aracely, R v. Nielsen*, 319 F. Supp. 3d 110, 145 (D.D.C. 2018).
21 “*Mezei* therefore remains binding precedent for our court—which means the Due
22 Process Clause does not forbid [petitioner’s] detention.” *Martinez v. Larose*, 980 F.3d
23 551, 554 (6th Cir. 2020) (Mem.) (Thapar, J., concurring in the denial of rehearing *en*
24 *banc* based on *Mezei* and *Thuraissigiam*).

25 And because it remains good law, *Mezei* “is directly on point and controls this
26 case.” *Poonjani v. Shanahan*, 319 F. Supp. 3d 644 (S.D.N.Y. 2018) (denying bond
27 because—for an alien on the “threshold of initial entry”—due process is “whatever
28 procedures has been authorized by Congress”). Other courts agree. *See Arana v. Arteta*,

1 2026 WL 279786 (S.D.N.Y. Feb. 3, 2026) (citing *Poonjani*); *Acosta v. Arteta*, 2026
2 WL 263470 (S.D.N.Y. Feb. 2, 2026) (citing *Poonjani*); *Mendez Ramirez v. Decker*,
3 612 F. Supp. 3d 200 (S.D.N.Y. 2020) (citing *Poonjani*); *Gonzalez Aguilar v. Wolf*, 448
4 F. Supp. 3d 1202, 1212 (D.N.M. 2020) (“*Mezei* and its progeny do not hold that
5 Petitioner has no due-process rights; rather, the applicable statutory process shapes her
6 procedural due-process rights. Because Petitioner has no statutory right to release or a
7 bond hearing, she has no procedural due-process right to the relief requested.”).

8 District courts in this Circuit that disagree generally neither grapple with *Mezei*
9 nor *Barrera-Echavarria*. See *Ibarra-Perez*, 468 F. Supp. 3d at 1177, fn. 25 (citing
10 *Poonjani* and rejecting the leading “prolonged detention” case, *Banda v. McAleenan*,
11 385 F. Supp. 3d 1099 (W.D. Wash. 2019), because *Banda* did not even discuss
12 *Barrera-Echavarria*, the “entry fiction” doctrine, or portions of *Rodriguez II and III*
13 and “seem to adopt *Barrera-Echavarria*’s logic as it pertains to arriving aliens”).

14 *Mezei* cannot be distinguished simply on “national security” grounds. Those
15 facts were immaterial. See *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (distinguishing
16 *Mezei* because he was treated “as if stopped at the border,” and “*that made all the*
17 *difference*”) (emphasis added). In fact, in *Barrera-Echavarria*, the dissent criticized
18 the majority’s reliance on *Mezei*, claiming that “[n]o such national security concerns
19 are implicated in *Barrera*’s case.” See 44 F.3d at 1452 (Pregerson, J., dissenting). Nor
20 can *Mezei* be dismissed as merely an exclusion case. See *id.* at 1449-50 (“[*Mezei*’s]
21 holding necessarily included a determination that *Mezei*’s detention was legal as
22 well.”); see *Zadvydas*, 533 U.S. at 693 (stating *Mezei* involved “indefinite detention”).
23 *Mezei* has direct application here; this precedent thus controls “until explicitly
24 overruled by that Court.” *United States v. Esqueda*, 88 F.4th 818, 828 (9th Cir. 2023).

25 In *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 138–40
26 (2020), the Supreme Court once again addressed the due process rights of individuals
27 like Petitioner—inadmissible arriving noncitizens seeking initial entry into the United
28 States. The Supreme Court stated that such individuals have no due process rights

1 “other than those afforded by statute.” *Id.* at 107; *see also id.* at 140 (“[A]n alien in
 2 respondent’s position has only those rights regarding admission that Congress has
 3 provided by statute.”). The Supreme Court noted that its determination was supported
 4 by “more than a century of precedent.” *Id.* at 138 (citing *Nishimura Ekiu v. United*
 5 *States*, 142 U.S. 651, 660 (1892); *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537,
 6 544 (1950); *Mezei*, 345 U.S. at 212; *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)).
 7 Because the only process due Petitioner is that afforded under section 1225(b), the
 8 Court must reject his claim that his detention violates the Fifth Amendment’s Due
 9 Process Clause and deny his requested relief. *See Thuraissigiam*, 591 U.S. at 138–40;
 10 *Mendoza-Linares*, 51 F.4th at 1167; *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206
 11 (9th Cir. 2022) (“The recognized liberty interests of U.S. citizens and aliens are not
 12 coextensive: the Supreme Court has ‘firmly and repeatedly endorsed the proposition
 13 that Congress may make rules as to aliens that would be unacceptable if applied to
 14 citizens.’”) (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)); *Zelaya-Gonzalez*,
 15 2023 WL 3103811, at *4 (“Binding Ninth Circuit and Supreme Court precedents are
 16 clear that Petitioner lacks any rights beyond those conferred by statute, and no statute
 17 entitles Petitioner to a bond hearing.”).

18 Since the Supreme Court’s decision in *Thuraissigiam*, numerous published
 19 decisions have acknowledged *Thuraissigiam*’s impact on the precise Fifth Amendment
 20 Due Process Clause that Petitioner might have raised in this petition: Does an alien
 21 detained under 8 U.S.C. § 1225(b)(1) have a due process right to release or a bond
 22 hearing after being detained for a certain period of time? The answer is no. *See*
 23 *Mendoza-Linares v. Garland*, No. 21-cv-1169-BEN (AHG), 2024 WL 3316306, *2
 24 (S.D. Cal. June 10, 2024) (“[T]he Court finds that Petitioner has no Fifth Amendment
 25 right to a bond hearing pending his removal proceedings.”); *Zelaya-Gonzalez*, 2023
 26 WL 3103811. *3 (S.D. Cal. Apr. 25, 2023) (same); *Rodriguez Figueroa v. Garland*,
 27 535 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 under three months. The length of this period of detention is considerably shorter than any length 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 these 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 Petitioner. Petitioner may be placed in full removal proceedings if a credible fear is found or, if Petitioner receives a negative credible fear finding, the expedited removal order will be executed ending his detention. 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.

Petitioner was lawfully detained when he applied for admission to the United States. As a result, Petitioner is rightly considered an applicant for admission, and his

1 mandatory detention does not violate due process. *See Markov v. LaRose*, No. 25-CV-
2 3811 JLS (SBC), 2026 WL 92069 (S.D. Cal. Jan. 13, 2026) (“Petitioner’s length of
3 detention, without more, does not render his detention unreasonable.”); *Duran Romero*
4 *v. LaRose*, No. 25-cv-3567-AGS-VET, ECF No. 7 (S.D. Cal. Jan. 14, 2026); *Shahin v.*
5 *Noem*, No. 25-cv-2496-AGS-KSC, ECF No. 12 (S.D. Cal. Dec. 23, 2025); *Cordova*
6 *Cordova*, No. 25-cv-2426-BAS-DDL, ECF No. 9 (S.D. Cal. Nov. 14, 2025); *Mendez*
7 *Ramirez*, 612 F. Supp. 3d at 221; *Gonzalez Aguilar v. Wolf*, 448 F. Supp. 3d at 1212; *de*
8 *la Rosa Espinoza*, 2020 WL 3452967, at *6-8.

9 **V. CONCLUSION**

10 For the reasons stated herein, Respondents respectfully request that the Court
11 deny this petition on the merits.

12
13 Dated: May 4, 2026

Respectfully submitted,

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