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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Nodirakhon Akhmatkulova, Petitioner, v. Eric Rokosky, et al., Respondents.	No. CV–26–06456–PHX–KML **AMENDED RESPONSE TO PETITION**

Respondents by and through undersigned counsel, hereby respond to the Petition for Writ of Habeas Corpus (Doc. 1) and the Court's Order.

Petitioner brings this Petition For Writ of Habeas Corpus (Petition) alleging that their civil immigration detention pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii) [EXPEDITED REMOVAL PROCEEDINGS] has become "prolonged" and therefore violates their constitutional rights under the Fifth Amendment's Due Process Clause. *See generally* Petition. Petitioner has an ongoing appeal with the Board of Immigration Appeals (BIA). For relief, they request that the Court rule that their ongoing detention is no longer justified and order their release or, in the alternative, order that Respondent provide them a bond hearing before an Immigration Judge (IJ) with the Government bearing the burden of proof by clear and convincing evidence to justify continued detention and that the IJ expressly consider alternatives to detention in its analysis. *See generally* Petition.

I. PETITIONER IS SUBJECT TO MANDATORY DETENTION PURSUANT TO 8 U.S.C 1225(b)(1)(B)(ii).

As an alien placed into expedited removal proceedings under Section 1225(b)(1) whom an asylum officer has found to have a credible fear of persecution, Petitioner is subject to detention not under Section 1226(a), but under Section 1225(b)(1)(B)(ii), and that statute does not permit Petitioner's release on bond.

The Supreme Court has affirmed that Section 1225(b)(1) means what it says: that an alien subject to detention thereunder must be detained "throughout the completion of applicable proceedings," and that such detention is not unconstitutionally indefinite. *Jennings v. Rodriguez*, 583 U.S. 281, 302 (2018). Section 1225(b)(1)'s mandatory detention does not violate the Due Process Clause. *See, e.g.*, *Doe v. Andrews*, 2025 U.S. Dist. LEXIS 231911 at *33–34 (E.D. Cal. Nov. 25, 2025); *Lopez v. United States Dep't of Homeland Sec.*, No. CV-20-01063-PHX-JJT (MTM), 2021 U.S. Dist. LEXIS 98716 at *5–7 (D. Ariz. Jan 28, 2021); *see also Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107 (2020). At least one district court has held that Section 1225(b)(1)(B)(ii) applies even when a petitioner had previously been granted bond erroneously, because to hold otherwise would allow "immigration officials [to] avoid the mandatory detention requirement" through procedural irregularity. *See Padilla v. Galovich*, 2025 U.S. Dist. LEXIS 260946 at *10 (W.D. Wis. Dec. 15, 2025).

In addition to lacking a statutory right to the relief they seek, Petitioner also has not met their burden of demonstrating that they warrant relief on the basis that their 8 U.S.C. § 1225(b)(1) detention violates his rights under the Fifth Amendment's Due Process Clause. In support of their claim, Petitioner contends that their detention violates their due process rights because detention that exceeds six months without a bond hearing is unconstitutional. Some courts have looked the "test" contained in the Supreme Court's decision in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

First, Petitioner's claim that their civil immigration detention automatically constituted a due process violation after it pierced the six-month mark is at odds with Supreme Court caselaw and Ninth Circuit caselaw. Notably, the Supreme Court *has never*

held that a noncitizen in civil immigration detention during pending removal proceedings automatically suffers a due process violation if detention eclipses the six-month mark. (Emphasis added). Instead, for over a hundred and twenty-five years now, the Supreme Court has held that civil immigration detention during "deportation proceedings [is] a constitutionally valid aspect of the deportation process" and repeatedly upheld detention for noncitizens for more than six months without holding that a bond hearing was constitutionally justified. *See, e.g., Demore v. Kim*, 538 U.S. 510-33 (2003). In addition to the Supreme Court rejecting such a claim, neither the Ninth Circuit nor this Court have embraced a "bright-line" rule that a noncitizen detained under 8 U.S.C. § 1225(b)(1) suffers a due process violation once it surpasses the six-month timeline. *See, e.g., Martinez v. Clark*, 36 F.4th 1219, 1223 (9th Cir. 2022); *I.E.S. v. Becerra*, 2023 WL 6317617, *7 (N.D. Cal. Sept. 27, 2023).

Second, while Petitioner contends that their detention under 8 U.S.C. § 1225(b)(1) violates their due process rights as it has become "Unreasonably Prolonged", the Court should not be guided by *Matthews* because its due process analysis "test" has not been utilized by the Supreme Court nor the Ninth Circuit in such circumstances. Instead, the Court should principally be guided by the Supreme Court's decision in *Demore*, 538 U.S. at 510-33, wherein the Court reiterated, as it had "[for] more than a century[,] [that] deportation proceedings 'would be vain if those accused could not be held in custody pending the inquiry into their true character'" and addressed a similar due process issue presented here: whether a criminal noncitizen held in civil immigration detention under 8 U.S.C. § 1226(c) has suffered a due process violation and what framework underlies such a determination?[1]

The Ninth Circuit's decision in *Fraihat v. Barr*, 790 F. App'x 120, 122 (9th Cir. 2020) further bolsters a rejection of Petitioner's due process claim as the length of their length of detention has not been arbitrary or indefinite, but instead simply a byproduct of their ongoing removal proceedings.

[1] Petitioner is being held subject to mandatory detention under 1225(b)(1) similar to those being held under 8 U.S.C. § 1226(c) who also do not have access to bond hearings.

As a result, Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(1) until the conclusion of their removal proceedings.

II. ON THE MERITS, PETITIONER HAS NOT MET THEIR BURDEN OF DEMONSTRATING THAT THEIR 8 U.S.C. § 1225(b)(1) DETENTION IS UNLAWFUL UNDER THE FIFTH AMENDMENT'S DUE PROCESS CLAUSE

Turning first to *Mathews*, as the Ninth Circuit recently noted and this Court itself has acknowledged, the Supreme Court has *never* utilized the *Mathews* "test" in adjudicating a due process claim akin to that raised by Petitioner. (Emphasis added); *see Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) ("[T]he Supreme Court when confronted with constitutional challenges to immigration detention has not resolved them through express application of *Mathews*.") (citations omitted); *id.* at 1214 ("In resolving similar immigration-detention challenges, the Supreme Court has not relied on the *Mathews* framework.") (Bumatay, J., concurring); *Jimenez v. Current or Acting Field Office Current Or Acting Field Office Director, et al.*, 2024 WL 714659, *7 (N.D. Cal. Feb. 21, 2024) ("The government is correct that the Supreme Court and the Ninth Circuit have not conclusively decided that Mathews governs challenges to detention under Section 1226(c).") (citation omitted). Here, Petitioner is being held under a similar mandatory detention provision as 1226(c) so Respondent's proffer these cases as analogous or instructive to the Court in analyzing the underlying due process claim.

Alternatively, in the event the Court elects to utilize the *Mathews* test in its analysis, the Court should rule that, on balance, the facts show that the factors weigh in favor of the Government, not Petitioner, and deny their due process claim.

Ninth Circuit caselaw post-*Jennings* further bolsters the assertion that Petitioner has not established that their 8 U.S.C. § 1225(b)(1) detention violates their due process rights. In *Fraihat*, 790 F. App'x 120-22, the Ninth Circuit addressed a habeas petition brought by a noncitizen held under 8 U.S.C. § 1226(c) for more than two years without a bond hearing. Therein, the Ninth Circuit indicated that it did not require consideration of length of detention in the analysis of whether a noncitizen detained under 8 U.S.C. § 1226(c) has

suffered a due process violation and ruled that "although Fraihat's immigration detention has been prolonged, it has not been arbitrary or indefinite. To the contrary, it has been tied to his removal proceedings." *Id.* at 122; *id.* at 122 ("Fraihat has not demonstrated that the Constitution requires consideration of the length of his detention in this context").

Here, as in *Fraihat*, 790 F. App'x at 122, Petitioner's detention is not arbitrary or indefinite; instead, like the noncitizen in *Fraihat*, their continued detention has solely been tied to their removal proceedings.

In sum, Petitioner has not demonstrated that their detention under 8 U.S.C. § 1225(b)(1) violates their rights under the Fifth Amendment's Due Process Clause.

III. IF THE COURT FINDS THAT PETITIONER'S DETENTION IS PROLONGED, THE COURT SHOULD ORDER THAT THEY BE AFFORDED A BOND HEARING BEFORE AN IJ WITH THE BURDEN OF PROOF ON THEM TO ESTABLISH BY CLEAR AND CONVINCING EVIDENCE THAT THEY WARRANT RELEASE.

The proper remedy, if any, to be afforded is a bond hearing before an IJ, with the burden of proof on Petitioner, not the Government, to justify whether further detention is warranted and that alternatives to detention is not taking into consideration in this analysis.

Supreme Court caselaw supports the proposition that a noncitizen held in civil immigration detention bear the burden of proof to demonstrate that he warrants release on detention. Critically, the Supreme Court has *always and repeatedly* affirmed the constitutionality of civil immigration detention pending removal proceedings and the Supreme Court has *never* ordered the Government to bear the burden of proof by clear and convincing evidence to justify detaining a noncitizen in civil immigration detention during ongoing removal proceedings. (Emphasis added); s*ee, e.g.*, *Demore*, 538 U.S. at 522, 531; *Rodriguez Diaz*, 53 F.4th at 1211 ("We are aware of no Supreme Court case placing the burden on the government to justify the continued detention of [a noncitizen], much less through an elevated 'clear and convincing' showing."). In fact, even when considering a noncitizen subject to potentially indefinite detention after the conclusion of removal proceedings, the Supreme Court held that *the noncitizen, not the Government*, must bear the

initial burden of proof to justify that release is warranted. *See Zadvydas*, 533 U.S. at 701 (Emphasis added).

While some courts have elected to use the Ninth Circuit's decision in *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011), this decision should not be afforded more weight than the applicable Supreme Court caselaw cited in the prior paragraph. *See Hart*, 266 F.3d at 1171; *Ortega*, 861 F.2d at 603 & n. 4. Nevertheless, *Singh* is distinguishable from this case.

In *Singh*, 638 F.3d at 1204-06, the Ninth Circuit, after applying the canon of constitutional avoidance to interpret the pre-final order detention statutes, held that at a *Casas-Castrillon v. DHS*, 535 F.3d 942 (9th Cir. 2008) bond hearing under 8 U.S.C. § 1226(a), the Government bore the burden of proof to demonstrate by clear and convincing evidence that further detention of the noncitizen is justified.

As to what burden of proof should be required at an IJ bond hearing if the Petition is granted, Respondent submits that Justice Breyer's dissenting opinion in *Jennings*, 138 S. Ct. 882, serves as a useful guide: "[P]roceedings should take place in accordance with customary rules of procedure and burdens of proof rather than the special rules that the Ninth Circuit imposed." Section 1226(c)(2) provides that a noncitizen may be granted release if she "satisfies the Attorney General" of certain requirements. That standard is equivalent to a standard requiring preponderance of the evidence. *See Matter of Barreiros*, 10 I. & N. Dec. 536, 537 (BIA 1964). Thus, at any bond hearing ordered by the Court, the Court should order that Petitioner bear the burden of proving by a preponderance of evidence that they warrant release.

Supreme Court caselaw also supports the proposition that a noncitizen held in civil immigration detention bear the burden of proof to demonstrate that she warrants release on detention. Critically, the Supreme Court has *always and repeatedly* affirmed the constitutionality of civil immigration detention pending removal proceedings and the Supreme Court has *never* ordered the Government to bear the burden of proof by clear and convincing evidence to justify detaining a noncitizen in civil immigration detention during ongoing removal proceedings. (Emphasis added); s*ee, e.g.*, *Demore*, 538 U.S. at 522, 531; *Rodriguez Diaz*, 53 F.4th at 1211 ("We are aware of no Supreme Court case placing the

burden on the government to justify the continued detention of [a noncitizen], much less through an elevated 'clear and convincing' showing."). In fact, even when considering a noncitizen subject to potentially indefinite detention after the conclusion of removal proceedings, the Supreme Court held that *the noncitizen, not the Government*, must bear the initial burden of proof to justify that release is warranted. *See Zadvydas*, 533 U.S. at 701 (Emphasis added).

Ultimately, based on the facts and the law, the Court should dismiss or deny this Petition. If the Court finds that Petitioner's detention has been unlawful, the Court should order that Petitioner be afforded a bond hearing before an IJ with the burden on them to demonstrate by a preponderance of the evidence that they warrant release.

IV. Conclusion.

In light of the above, Respondents respectfully request the Court deny Petitioner's Petition for Writ of Habeas Corpus.

Respectfully submitted this 2nd day of October 2026.

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CERTIFICATE OF SERVICE

I hereby certify that on October 2, 2026, I mailed the attached document via U.S. Mail to:

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