ERIC GRANT
United States Attorney
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Fresno, CA 93721
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Attorneys for Respondent

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

GUL NAZ AKBARI, [redacted]

Petitioner,

v.

WARDEN OF CALIFORNIA CITY DETENTION FACILITY,

Respondent.

No. 1:26-CV-07992-DC-SCR

ANSWER

The petition should be denied because Petitioner was detained at the border and has never been released in the United States. Petitioner is seeking initial entry into the U.S., a matter committed to the sound discretion of the executive. The Supreme Court has held that "Congress is entitled to set the conditions for an alien's lawful entry into this country and that, as a result, an alien at the threshold of entry cannot claim any greater rights under the Due Process Clause" than those offered by statute. *Dept. of Homeland Secur. v. Thuraissigiam*, 591 U.S. 103, 107 (2020). Here, the statute mandates Petitioner's detention until the conclusion of her removal proceedings. Her petition should be denied.

Petitioner illegally entered the United States on May 21, 2025. Ex. A (Form I-213). She was apprehended and detained by Border Patrol. *Id.* She was processed as an expedited removal; however, following a credible fear determination, she was later placed in removal proceedings under 8 U.S.C. § 1225(b). Ex. B (NTA); Ex. C (credible fear finding); *see also* 8 C.F.R. § 208.30.

Petitioner's next hearing in immigration court is scheduled for October 13, 2026. *See* EOIR Automated Case Information available at https://acis.eoir.justice.gov/en/caseInformation (last visited Oct. 8, 2026).

A. Petitioner's Detention is Mandated by 8 U.S.C. § 1225(b)(1)(B)(ii)

An alien such as Petitioner who arrives in the United States not at a designated port of entry is an applicant for admission under 8 U.S.C. § 1225(a)(1). If an applicant "indicates either an intention to apply for asylum . . . or a fear of persecution," the immigration officer "shall refer the alien for an interview by an asylum officer." 8 U.S.C. §§ 1225(b)(1)(A)(i)–(ii). If the asylum officer finds the applicant has a credible fear of persecution, the applicant "shall be detained for further consideration of the application for asylum;" and if the officer determines there is no credible fear of persecution, the officer "shall order the alien removed from the United States without further hearing or review." 8 U.S.C. § 1225(b)(1)(B)(ii), (iii)(I), (IV) ("alien subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution and, if found to not have such a fear, until removed.").

As explained by the Supreme Court in *Jennings v. Rodriguez*,

> [r]ead most naturally, §§ 1225(b)(1) and (b)(2) … mandate detention of applicants for admission until certain proceedings have concluded. Section 1225(b)(1) aliens are detained for "further consideration of the application for asylum," and § 1225(b)(2) aliens are in turn detained for "[removal] proceeding[s]." Once those proceedings end, detention under § 1225(b) must end as well. Until that point, however, nothing in the statutory text imposes any limit on the length of detention. And neither § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings.

583 U.S. at 297; *see also Padilla v. U.S. Immigr. & Customs Enf't*, 704 F. Supp. 3d 1163, 1168 (W.D. Wash. 2023) ("The Attorney General [has] interpreted 8 U.S.C. § 1225(b)(1)(B)(ii) to require mandatory detention without bond hearings for asylum seekers who were initially subject to expedited removal but later transferred to full removal proceedings after establishing a credible fear.") (citing *Matter of M-S-*, 27 I. & N. Dec. 509, 515-17 (2019)).[1]

[1] There is ongoing class action litigation asserting a due process right to a bond hearing for individuals determined to be inadmissible to the United States that demonstrate a credible fear of persecution or torture if returned to their home country. *See Padilla v. ICE*, No. 2:18-cv-00928-MJP (W.D. Wash.), appeal pending Case No. 24-2801 (9th Cir.) (argued May 21, 2025).

B. Due Process Does Not Entitle Petitioner to a Bond Hearing.

The Supreme Court has repeatedly acknowledged that "the nature of protection [under the Due Process clause] may vary depending on [immigration] status and circumstance." *Zadvydas v. Davis*, 522 U.S. at 694 ("The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law."); *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958) ("our immigration laws have long made a distinction between those aliens who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality. In the latter instance, the Court has recognized additional rights and privileges not extended to those in the former category who are merely 'on the threshold of initial entry.'"); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (collecting cases) ("[A]n alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application . . . [H]owever, once an alien gains admission to our country and begins to develop the ties that go with permanent residence, his constitutional status changes accordingly.").

Thuraissigiam invokes a "century of precedent" to highlight certain "fundamental propositions" including that the "power to admit or exclude aliens is a sovereign prerogative," the Constitution gives the political department of the government plenary authority to decide which aliens to admit, and "the power to set the procedures to be followed in determining whether an alien should be admitted." *Dept. of Homeland Secur. v. Thuraissigiam* 591 U.S. 103, 139 (2020) (internal citations and quotations omitted). As *Thuraissigiam* points out, those foundational principles constitute a "century old rule regarding the due process rights of an alien seeking initial entry." *Id.*

In *Shaughnessy v. United States ex rel. Mezei,* 345 U.S. 206 (1953) the Court found, "Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned." *Id.* at 212 (internal quotation marks omitted). Notably, Mezei was detained for two years—much longer than Petitioner—and unlike Petitioner had established ties in the United States as he was a former lawful permanent resident returning from a trip abroad. Two facts that are highly relevant to the due process analysis and yet the Court did not find the Due Process Clause to require more process than what the statute offered.

In sum, *Thuraissigiam* affirms the long-standing rule that noncitizens, particularly when seeking initial entry into the U.S., are limited to those procedural rights afforded by statute. Because § 1225(b)(1) does not extend any right to bond hearings or judicially ordered release, Petitioner has no claim that she is statutorily or constitutionally entitled to any habeas relief.

CONCLUSION

For the foregoing reasons, the petition should be denied.

Dated: October 8, 2026

Respectfully submitted,

ERIC GRANT
United States Attorney

By: */s/ Elisa M. Rodriguez*
ELISA M. RODRIGUEZ
Assistant United States Attorney

EXHIBIT A

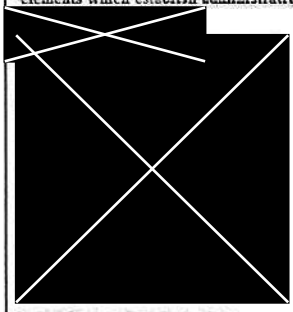
U.S. Department of Homeland Security

Record of Deportable/Inadmissible Alien

Family Name (CAPS): AKBARI, GUL NAZ	First	Middle	Sex: F / Hair: [redacted] / Eyes / Complxn
Country of Citizenship: AFGHANISTAN	Passport Number and Country of Issue: [redacted]	File Number: [redacted]	Height: [redacted] / Weight / Occupation
U.S. Address			Scars and Marks: See Narrative
Date, Place, Time, and Manner of Last Entry: 05/21/2025 17:30, SYS, PWA (Afoot)		Passenger Boarded at	F.B.I. Number: 6JR2JXPA4 / ☐ Single ☐ Divorced ☐ Married ☐ Widower ☐ Separated
Number, Street, City, Province (State) and Country of Permanent Residence			Method of Location/Apprehension: PB
Date of Birth: [redacted]/2003 Age: 22	Date of Action: 05/21/2025	Location Code: IMB	At/Near / Date/Hour: 05/21/2025 17:35
City, Province (State) and Country of Birth: AFGHANISTAN	AR ☒ Form: (Type and No.) Lifted ☐ Not Lifted ☐		By: ARTURO ARREOLA
NIV Issuing Post and NIV Number	Social Security Account Name		Status at Entry / Status When Found
Date Visa Issued	Social Security Number		Length of Time Illegally in U.S.
Immigration Record: NEGATIVE	Criminal Record		
Name, Address, and Nationality of Spouse (Maiden Name, if Appropriate): [redacted]			Number and Nationality of Minor Children: None
Father's Name, Nationality, and Address, if Known: [redacted]	Mother's Present and Maiden Names, Nationality, and Address, if Known: [redacted]		
Monies Due/Property in U.S. Not in Immediate Possession: None Claimed	Fingerprinted? ☐ Yes ☐ No	Systems Checks: See Narrative	Charge Code Words(s): See Narrative
Name and Address of (Last)(Current) U.S. Employer	Type of Employment	Salary / Hr	Employed from/to

Narrative (Outline particulars under which alien was located/apprehended. Include details not shown above regarding time, place and manner of last entry, attempted entry, or any other entry, and elements which establish administrative and/or criminal violation. Indicate means and route of travel to interior.)

Left Index fingerprint



Right Index fingerprint

FAMILY INFORMATION

Father:AKBARI, HANIFA is a citizen of AFGHANISTAN.
Mother: [redacted]
Spouse: [redacted]

Child:Subject does not have children or dependents.

SCARS MARKS AND TATTOOS
---------- ...(CONTINUED ON I-831)

JUAN NARANJO
BORDER PATROL AGENT

Alien has been advised of communication privileges _____ (Date/Initials) (Signature and Title of Immigration Officer)

Distribution:

Received: (Subject and Documents) (Report of Interview)

Officer: JUAN NARANJO

on: May 21, 2025 (time)

Disposition: Expedited Removal - Per 212(F)

Examining Officer: _____

Form I-213 (Rev. 08/01/07)

U.S. Department of Homeland Security

Continuation Page for Form I-213

Alien's Name	File Number	Date
AKBARI, GUL NAZ	[redacted]	05/21/2025

None Indicated - None Indicated

CURRENT CRIMINAL CHARGES

05/21/2025 - 8 USC 1182 - ALIEN INADMISSIBILITY UNDER SECTION 212

CURRENT ADMINISTRATIVE CHARGES

05/21/2025 - 212a7AiI - IMMIGRANT WITHOUT AN IMMIGRANT VISA

RECORDS CHECKED

CIS checked on 05/21/2025 with Negative result.ABIS checked on 05/21/2025 with Positive result.EARM checked on 05/21/2025 with Negative result.NCIC checked on 05/21/2025 with Negative result.TECS checked on 05/21/2025 with Negative result.NGI checked on 05/21/2025 with Negative result.

RECORD OF DEPORTABLE/EXCLUDABLE ALIEN:

IMMIGRATION HISTORY:
Number of VRs: See records
Number of Removals: See records
Last Removal Date and Place: N/A

CRIMINAL HISTORY:
See records

ENCOUNTER:
Border Patrol Agent (BPA) Arturo Arreola encountered Gul Naz AKBARI (DOB: [redacted], a citizen of Afghanistan, [redacted] on 05/21/2025 at approximately 05:35 PM near SAN YSIDRO, CA. The apprehending agent then determined that AKBARI had unlawfully entered the United States of America near SAN YSIDRO, CA from Mexico at a time and place other than as designated by the Secretary of Homeland Security. AKBARI was apprehended within a group of 5 individuals.

After determining that AKBARI was an alien who illegally entered the United States of America, AKBARI was arrested and transported to the San Diego Central Processing Center (SAN DIEGO, CA) for further processing using the e3/IDENT and Next Generation Identification (NGI) Systems.

IMMIGRATION VIOLATION:
At the San Diego Central Processing Center, AKBARI stated that they are a citizen and national of Afghanistan without the necessary legal documents to enter, pass through, or remain in the United States. AKBARI illegally crossed the international boundary on 05/21/2025 at approximately 05:30 PM near SAN YSIDRO, CA without being inspected by an immigration officer at a designated Port of Entry.

CONSULAR NOTIFICATION:
AKBARI was notified of their right to communicate with a Consular Officer from their country as per Article 36(1)(b) of the Vienna convention on Consular Relations.

DISPOSITION/ADDITIONAL INFORMATION:
AKBARI was served with DHS forms I-860 and I-296. AKBARI is being held in Department of Homeland Security custody pending removal proceedings as an Expedited Removal as per Section 235(b)(1) of the INA. AKBARI was apprehended within fourteen days of their last entry into

Signature	Title
JUAN NARANJO	BORDER PATROL AGENT

U.S. Department of Homeland Security

Continuation Page for Form I-213

Alien's Name	File Number	Date
AKBARI, GUL NAZ	[redacted]	05/21/2025

the United States, and within 100 air miles of any United States land border.

AKBARI made an unlawful entry into the United States during the suspension of and limitation on entry described in the Presidential Proclamation, Guaranteeing the States Against Invasion under INA 212(f). AKBARI does not qualify for an exception to the Proclamation. AKBARI will be processed for Expedited Removal under the provisions of 8 C.F.R. 235.15. AKBARI was given a list of free legal services.

AKBARI will be removed at a time, place and in a manner consistent with removal proceedings for a citizen of their designated country of removal.

Based on the information provided AKBARI does not derive or acquire U.S. citizenship.

UNITED STATES POINT OF CONTACT INFORMATION:
Point of contact name not provided
IN DHS CUSTODY
Point of contact phone number not provided

OTHER IDENTIFYING NUMBERS

ALIEN-[redacted]

Signature	Title
JUAN NARANJO	BORDER PATROL AGENT

U.S. Department of Homeland Security

Continuation Page for Form 1213

Alien's Name	File Number	Date
AKBARI, GUL NAZ	[redacted]	05/21/2025

ADDENDUM TO RECORD OF DEPORTABLE/EXCLUDABLE ALIEN

USBP Event#: [redacted]
NTC Event#:

Full Name (verified by travel documents, passport, identification, etc. if possible): GUL NAZ AKBARI
AKA(s): N/A
Nickname/Moniker: N/A
A#: [redacted]
FIN:
DOB:
Country of Birth: AFGHANISTAN
Country of Citizenship: AFGHANISTAN
Country of Residence: AFGHANISTAN
Town, City, District, and/or Region: WARAS, BAMYAN
Tribe, Clan and/or Subclan names: N/A
Email Address(s): N/A
Telephone Numbers (used during travel to U.S., as well as from their homeland): N/A
Social Media Profiles (platforms and usernames): N/A
Mobile Messaging Apps (platforms and usernames): N/A
Religion: SHIA-MUSLIM
Education (with approximate dates): HIGHSCHOOL
Military Experience (with approximate dates): N/A
Gang/Cartel Affiliation (if applicable): N/A
Preferred Language: PERSIAN

Father and Mother Info:
Names and Ages (DOB): [redacted]
COB: AFGHANISTAN
Address: N/A
Employment: N/A
Mother's Maiden Name: N/A
Phone number(s): N/A

Spouse Info:
Married (Y/N): Y
Spouse Name and Age (DOB): [redacted]
COB: AFGHANISTAN
Address: N/A
Phone number: N/A
Social Media Profile(s): N/A

Family Info (Siblings):
Siblings (Y/N): Y
Sibling Name(s) and Age(s): [redacted]
COB(s): AFGHANISTAN
Address(s): N/A
Phone number(s): N/A
Social Media Profile(s): N/A

US POC Info:
Name(s): HABIB WARASI
DOB/Age: N/A
Address: NEW YORK

Signature	Title
JUAN NARANJO	BORDER PATROL AGENT

U.S. Department of Homeland Security

Continuation Page for Form 1213

Alien's Name	File Number	Date
AKBARI, GUL NAZ	[redacted]	05/21/2025

Phone Number: [redacted]
Email: N/A
Social Media Profile(s): N/A
Relationship: UNCLE
Date of last communication: MAY 21, 2025

Employer Info
Name: N/A
Company: N/A
Address: N/A
Email: N/A
Company Website: N/A
Date of last employment: N/A

Crypto Banking: N/A
Crypto Wallet Applications/Platforms:
Crypto Wallet ID:

*****Travel*****
Passport and passport number(s): [redacted]
Passport Expiration Date:8/14/2025
Foreign Visas, citizenship, and/or status in foreign countries outside of homeland: N/A
Foreign countries visited or domiciled outside of homeland (list with approximate dates): N/A
Intended Destination: N/A
Purpose of Travel to U.S.: N/A

Signature	Title
JUAN NARANJO	BORDER PATROL AGENT

EXHIBIT B

DEPARTMENT OF HOMELAND SECURITY

NOTICE TO APPEAR

In removal proceedings under section 240 of the Immigration and Nationality Act:

File No. [redacted]

In the Matter of:

Respondent: Akbari, Gul Naz currently residing at:

c/o DHS Otay Mesa Detention Center, 7488 Calzada de la Fuente, San Diego, CA 92154
(Number, street, city and ZIP code) (619) 661-5600 (Area code and phone number)

- [ ] You are an arriving alien.
- [x] You are an alien present in the United States who has not been admitted or paroled.
- [ ] You have been admitted to the United States but are removable for the reasons stated below.

The Department of Homeland Security alleges that:

1) You are not a citizen or national of the United States;
2) You are a native of AFGHANISTAN and a citizen of AFGHANISTAN;
3) You entered in the United States at or near San Ysidro, CA on or about March 25, 2025;
4) You were not then admitted or paroled after inspection by an immigration officer;
5) You are an immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

Section 212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who has arrived in the United States at any time or place other than as designated by the Attorney General.

Section 212(a)(7)(A)(i)(I) of the Act, as amended, as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211 (a) of the Act.

- [ ] This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.
- [x] Section 235(b)(1) order was vacated pursuant to: [x] 8CFR 208.30(f) [ ] 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

EOIR OTM, 7488 CALZADA DE LA FUENTE, SAN DIEGO, CA 92154
(Complete Address of Immigration Court, including Room Number, if any)

on 10-23-25 (Date) at 8:00 A.M. (Time) to show why you should not be removed from the United States based on the charge(s) set forth above.

Marielle Cefa, BPDO
(Signature and Title of Issuing Officer)

Date 10/10/2025 SAN DIEGO, CALIFORNIA
(City and State)

EOIR – 1 of 4

DHS Form I-862 (2/20) See reverse for important information Page 1 of 2

Exh. 1 - Adm.

EXHIBIT C

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OTAY MESA IMMIGRATION COURT

Respondent Name:
AKBARI, GUL

To:
Masoum, Shabnam
[redacted]

A-Number:
[redacted]

Riders:
In Credible Fear Review Proceedings
Initiated by the Department of Homeland Security
Date:
09/19/2025

ORDER OF THE IMMIGRATION JUDGE

On 09/19/2025, a review of the Department of Homeland Security's (DHS's) negative credible fear determination was held in this matter. This Court considered testimony and any documentary evidence submitted regarding the Applicant's fear of persecution or torture.

Upon de novo consideration, the Court makes the findings below —

[complete section (1), then complete either section (2) or (3)]

(1) — For all cases

A. The Applicant —

☐ Is covered by the presumption of asylum ineligibility at 8 C.F.R. § 1208.33(a)(1)-(2),

or

☑ Is not covered by the presumption of asylum ineligibility at 8 C.F.R. § 1208.33(a)(1)-(2).

B. If the Applicant is covered by the presumption of asylum ineligibility, the Applicant —

☐ Has rebutted the presumption under 8 C.F.R. § 1208.33(a)(3),

or

☐ Has not rebutted the presumption under 8 C.F.R. § 1208.33(a)(3).

(2) — IF the Applicant *is not covered* by the presumption OR *has rebutted* the presumption

☑ The Applicant *has* established a *significant possibility* of eligibility for asylum under section 208 of the Immigration and Nationality Act (Act), withholding of removal under section 241(b)(3) of the Act, or withholding of removal under the Convention Against Torture (CAT).

☐ The Applicant *has not* established a *significant possibility* of eligibility for asylum under section 208 of the Immigration and Nationality Act (Act), withholding of removal under section 241(b)(3) of the Act, or withholding of removal under the Convention Against Torture (CAT).

(3) – If the Applicant *is covered by* the presumption AND *has not rebutted* the presumption

☐ The Applicant *has* established a *reasonable possibility* of persecution (meaning a reasonable possibility of being persecuted because of their race, religion, nationality, political opinion, or membership in a particular social group) or torture.

☐ The Applicant *has not* established a *reasonable possibility* of persecution (meaning a reasonable possibility of being persecuted because of their race, religion, nationality, political opinion, or membership in a particular social group) or torture.

Based on the findings above, the Court issues the following order –

IT IS HEREBY ORDERED THAT:

☐ The DHS credible fear determination is **AFFIRMED**, and the case is returned to DHS for removal of the Applicant.

☑ The DHS credible fear determination is **VACATED**.

This is a final order. There is no appeal from this decision.

Immigration Judge: HEESCH, MEGHAN 09/19/2025

Certificate of Service

This document was served:

Via: [M] Mail | [P] Personal Service | [E] Electronic Service | [U] Address Unavailable

To: [ ] Alien | [M] Alien c/o custodial officer | [E] Alien atty/rep. | [E] DHS

Respondent Name : AKBARI, GUL | A-Number : 221-417-423

Riders:

Date: 09/19/2025 By: GONZALEZ, EMELY, Court Staff

CERTIFICATE OF SERVICE

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. She also certifies that on October 8, 2026, a copy of the ANSWER was served by placing said copy in a postpaid envelope addressed to the person(s) hereinafter named, at the place(s) and address(es) stated below, which is/are the last known address(es), and by depositing said envelope and contents in the United States Mail at Fresno, California.

Addressee: **Gul Naz Akbari**
[redacted]
CALIFORNIA CITY (ICE)
P.O. Box 2513
22844 Virginia Boulevard
California City, CA 93505

/s/ Elisa M. Rodriguez
ELISA M. RODRIGUEZ