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

11 ALLA MARKOSIAN,

12
13 Petitioner,

14 v.

15 PAM BONDI, Attorney General of the
16 United States, et al.,

17 Respondents.
18

Case No.: 25-cv-03494-JES-BLM

**RETURN TO PETITION FOR WRIT
OF HABEAS CORPUS**

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1 I. INTRODUCTION

2 Petitioner requests the Court to order her immediate release from Immigration
3 and Customs Enforcement (ICE) custody or require that she be afforded a bond
4 hearing. As an arriving alien found to have a credible fear of persecution, however,
5 Petitioner’s detention is mandated by 8 U.S.C. § 1225(b)(1)(B)(ii) until the conclusion
6 of her removal proceedings. Petitioner’s removal proceedings have not concluded
7 because her appeal of the Immigration Judge’s decision ordering her removed to Russia
8 or Armenia remains pending. As Petitioner is subject to mandatory detention under 8
9 U.S.C. § 1225(b)(1)(B)(ii), the Court should deny Petitioner’s requests for relief.

10 II. FACTUAL AND PROCEDURAL BACKGROUND

11 Petitioner is a native of Armenia and citizen of Russia. *See* Declaration of
12 La’Shaniece Wilson (“Wilson Decl.”) at ¶ 4. On December 12, 2024, she applied for
13 admission to the United States at a port of entry. *See id.* She did not then possess legal
14 documentation to be in or enter the United States. *See id.* She was determined to be an
15 arriving alien inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I), placed into expedited
16 removal proceedings under 8 U.S.C. § 1225(b)(1), and taken into Immigration and
17 Customs Enforcement (ICE) custody pursuant to 8 U.S.C. § 1225(b)(1)(B). *See id.* She
18 was then interviewed by an asylum officer pursuant to 8 U.S.C. § 1225(b)(1)(B). *See*
19 *id.* at ¶ 7.

20 After receiving a positive credible fear determination, Petitioner was issued a
21 Notice to Appear (NTA). *See id.*; Exh. 1.¹ The filing of the NTA initiated removal
22 proceedings, pursuant to 8 U.S.C. § 1229a, against Petitioner, and those proceedings
23 remain ongoing. Within her removal proceedings under § 1229a, Petitioner has the
24 opportunity to apply for relief from removal before an immigration judge (IJ), including
25 asylum under 8 U.S.C. § 1158, withholding of removal under 8 U.S.C. § 1231(b)(3),
26 and relief under the Convention Against Torture.

27 _____
28 ¹ The attached exhibits are true copies, with redactions of private information, of documents obtained from ICE counsel.

1 Petitioner filed her relief application with the immigration court on June 6, 2025,
2 and her individual merits hearing was scheduled for June 24, 2025. *See* ECF No. 1 at
3 ¶ 15; Exh. 2. A few days before the hearing, Petitioner’s counsel requested a
4 continuance of the hearing. *See* Exh. 2. The merits hearing was rescheduled for October
5 1, 2025. *See* Exh. 3. On that date, the IJ conducted the hearing, denied Petitioner’s
6 applications for relief, and ordered her removed to Russia, and in the alternative,
7 Armenia. *See* Wilson Decl. at ¶ 10; Exh. 4. On October 9, 2025, Petitioner appealed the
8 IJ’s decision to the Board of Immigration Appeals (BIA). *See* ECF No. 1 at ¶ 15.
9 Because Petitioner’s appeal remains pending, there is no administratively final order of
10 removal at this time. *See* Wilson Decl. at ¶ 13. Petitioner remains mandatorily detained
11 at the Otay Mesa Detention Center (“OMDC”) under 8 U.S.C. § 1225(b)(1)(B)(ii). *See*
12 *id.* at ¶ 9. Should the BIA affirm the IJ’s decision, ICE will commence efforts to execute
13 her removal. *See id.* at ¶ 13.

14 III. STATUTORY BACKGROUND

15 Section 235 of the Immigration and Nationality Act (INA), codified at 8 U.S.C.
16 § 1225, applies to an “applicant for admission,” defined as an “alien present in the
17 United States who has not been admitted” or “who arrives in the United States.” 8
18 U.S.C. § 1225(a)(1). “[A]pplicants for admission fall into one of two categories, those
19 covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings v. Rodriguez*,
20 583 U.S. 281, 287 (2018).

21 Section 1225(b)(1) applies to arriving aliens and “certain other” aliens “initially
22 determined to be inadmissible due to fraud, misrepresentation, or lack of valid
23 document.” *Id.* (citing 8 U.S.C. § 1225(b)(1)(A)(i)). These aliens are generally subject
24 to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if “the alien
25 indicates an intention to apply for asylum . . . or a fear of persecution,” immigration
26 officers will refer the alien for a credible fear interview. 8 U.S.C. § 1225(b)(1)(A)(ii).
27 “If the officer determines at the time of the interview that [the] alien has a credible fear
28 of persecution . . . , the alien *shall be detained* for further consideration of the

1 application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii) (emphasis added). If the alien
2 does not indicate an intent to apply for asylum, does not express a fear of persecution,
3 or is “found not to have such a fear,” they “shall be detained . . . until removed” from
4 the United States. 8 U.S.C. §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

5 IV. ARGUMENT

6 Petitioner’s habeas petition should be denied because § 1252(g) bars judicial
7 review over her claims, and she is lawfully detained under the INA and the Constitution.

8 A. Petitioner’s claims are barred under 8 U.S.C. § 1252(g).

9 Respondents contend that judicial review of Petitioner’s claim is barred by
10 § 1252(g), which states that “no court shall have jurisdiction to hear any cause or claim
11 by or on behalf of any alien arising from the decision or action by the Attorney General
12 to commence proceedings, adjudicate cases, or execute removal orders.” *Reno v.*
13 *Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999).

14 Here, Petitioner’s claims of unlawful detention necessarily arise from the
15 Department of Homeland Security’s² decision to commence removal proceedings
16 against her because that decision unavoidably triggers mandatory detention under 8
17 U.S.C. § 1225(b)(1)(B)(ii) until the conclusion of her removal proceedings. *See, e.g.,*
18 *Wang v. United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at *6 (C.D.
19 Cal. Aug. 18, 2010) (finding § 1252(g) bars judicial review of false imprisonment claim
20 because the plaintiff’s detention arose from the decision to commence removal
21 proceedings, and in turn, the “statute mandating detention during removal proceedings
22 of a person charged as an ‘arriving alien.’”).

23 As explained by another district court, removal proceedings are commenced,
24 when, as occurred here, “the alien is issued a Notice to Appear before an immigration
25 court.” *Herrera-Correra v. United States*, No. 08-2941 DSF (JCx), 2008 WL 11336833,
26

27 ² “In 2002, Congress transferred the Attorney General’s immigration enforcement
28 responsibilities to the Secretary of Homeland Security.” *Ibarra-Perez v. United States*,
154 F.4th 989, 995 n.2 (9th Cir. 2025).

1 at *3 (C.D. Cal. Sept. 11, 2008); Exh. 1. The government “may arrest the alien against
2 whom proceedings are commenced and detain that individual until the conclusion of
3 those proceedings.” *Herrera-Correra*, 2008 WL 11336833, at *3. “Thus, an alien’s
4 detention throughout this process arises from the [government’s] decision to commence
5 proceedings” and review of claims arising from such detention is barred under
6 § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)); *see Wang*,
7 2010 WL 11463156, at *6.

8 Because this habeas petition brings claims “arising from the decision or action
9 by the [government] to commence proceedings,” review of Petitioner’s claims is barred
10 under 8 U.S.C § 1252(g). Thus, the Court must dismiss the habeas petition.

11 **B. Petitioner is lawfully detained under the INA and the Constitution.**

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

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

16 Petitioner is an arriving alien. *See* Exh. 1 (reflecting that Petitioner admitted that
17 she was an arriving alien). As discussed above, arriving aliens are applicants for
18 admission who are subject to expedited removal proceedings, *see* § 1225(b)(1)(A)(i),
19 unless—as occurred here—an asylum officer has determined that they have a credible
20 fear of persecution, *see* § 1225(b)(1)(B)(ii). In such cases, the INA mandates that “the
21 alien *shall be* detained for further consideration of the application for asylum.” 8 U.S.C.
22 § 1225(b)(1)(B)(ii) (emphasis added); *see also Matter of M-S*, 27 I.&N. Dec. 509, 519
23 (AG 2019) (“all aliens transferred from expedited to full [removal] proceedings after
24 establishing a credible fear are ineligible for bond”). Because Petitioner is an arriving
25 alien found to have a credible fear of persecution and placed in full removal
26 proceedings, her detention is mandated by § 1225(b) until the conclusion of her
27 removal proceedings. *See Jennings*, 583 U.S. at 302 (“§§ 1225(b)(1) and (b)(2)
28 mandate detention of aliens throughout the completion of applicable proceedings”).

1 Petitioner contends that she is entitled to release or a bond hearing. But the
2 Supreme Court has rejected such contentions, explaining: “Nothing in the statutory text
3 imposes any limit on the length of detention. And neither § 1225(b)(1) nor § 1225(b)(2)
4 says anything whatsoever about bond hearings.” *Jennings*, 583 U.S. at 297. Except for
5 temporary parole granted at the discretion of the Attorney General “for urgent
6 humanitarian reasons or significant public benefit” under 8 U.S.C. § 1182(d)(5), “there
7 are no *other* circumstances under which aliens detained under § 1225(b) may be
8 released.” *Id.* at 300 (emphasis in original).

9 Petitioner claims that Respondents violated the Administrative and Procedures
10 Act (APA) when they applied the mandatory detention provision to her, but granted
11 parole to her mother and sister, despite all of them arriving in the United States together.
12 The claim is unavailing. First, ICE has not received a formal request for parole from
13 Petitioner. *See* Wilson Decl. at ¶ 12. Second, as explained by the declaring officer,
14 Petitioner’s mother and minor sister “were not detained in ICE custody as minors cannot
15 be detained at OMDC.” *Id.* at ¶ 5. Petitioner was not a minor at the time of detention.
16 *See* Exh. 5 at 1 (“Age: 18”). Because there was no parole request for the government to
17 consider and the difference in treatment between Petitioner and her mother and minor
18 sister at the time of detention was grounded in reason (to prevent separation of mother
19 and minor who cannot be detained at OMDC), the Court should reject Petitioner’s APA
20 claim.

21 As Petitioner’s removal proceedings are pending, and she has not been granted
22 temporary parole, § 1225(b)(1)(B) mandates her detention until the proceedings have
23 concluded. *Jennings*, 583 U.S. at 297 (“Once those proceedings end, detention under
24 § 1225(b) must end as well.”). The Court may not impose temporal limitations on the
25 statute where none exist. *See id.* at 312 (rejecting the dissent’s drawing of a “6-month
26 limitation out of thin air”). Because Petitioner is lawfully detained under
27 § 1225(b)(1)(B), and the statute does not entitle her to release at this time, her petition
28 must be denied. *See, e.g., Zelaya-Gonzalez v. Matuszewski*, No. 23-cv-151-JLS-KSC,

1 2023 WL 3103811, at *3 (S.D. Cal. Apr. 25, 2023) (applying *Jennings* to find that the
2 petitioner had no right to release or a bond hearing).

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

4 Petitioner also argues that her prolonged mandatory detention under the INA
5 violates the due process clause of the Fifth Amendment to the U.S. Constitution. But,
6 as an applicant for admission, the only due process rights she has are those rights
7 statutorily afforded by Congress. *See Dep’t of Homeland Sec. v. Thuraissigiam*, 591
8 U.S. 103, 138–40 (2020) (rejecting an arriving alien’s due process claim and holding
9 that he “has only those rights regarding admission that Congress has provided by
10 statute”); *accord Mendoza-Linares v. Garland*, 51 F.4th 1146, 1167 (9th Cir. 2022)
11 (holding that any rights the alien has “are purely statutory in nature and are not derived
12 from, or protected by, the Constitution’s Due Process Clause.”).

13 Here, Petitioner is detained under § 1225(b)(1), and the statute does not provide
14 her a right to have this Court determine whether she is entitled to release, nor does it
15 provide her a right to a bond hearing before an IJ. *See Jennings*, 583 U.S. at 297
16 (“Nothing in the statutory text imposes any limit on the length of detention. And neither
17 § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings.”).
18 Because the only process due Petitioner is that afforded under § 1225(b), the Court must
19 reject her claim that her detention violates the Fifth Amendment’s Due Process Clause
20 and deny her requested relief. *See Thuraissigiam*, 591 U.S. at 138–140; *Mendoza-*
21 *Linares*, 51 F.4th at 1167; *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir.
22 2022) (“The recognized liberty interests of U.S. citizens and aliens are not coextensive:
23 the Supreme Court has ‘firmly and repeatedly endorsed the proposition that Congress
24 may make rules as to aliens that would be unacceptable if applied to citizens.’”) (quoting
25 *Demore v. Kim*, 538 U.S. 510, 522 (2003)); *Zelaya-Gonzalez*, 2023 WL 3103811, at *4
26 (“Binding Ninth Circuit and Supreme Court precedents are clear that Petitioner lacks
27 any rights beyond those conferred by statute, and no statute entitles Petitioner to a bond
28 hearing.”).

1 Even if the Court infers a constitutional right against prolonged mandatory
2 detention, Petitioner’s claim still fails. Though Petitioner cites *Mathews v. Eldridge*,
3 424 U.S. 319, 333 (1976) in her petition, courts in this district have declined to apply
4 the *Mathews* test under these circumstances and have instead applied the test in *Lopez*
5 *v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022).³ See, e.g., *Sanchez-Rivera*, No.
6 22-cv-1357-MMA-JLB, 2023 WL 139801 at *5 (S.D. Cal. Jan. 9, 2023) (“while the
7 *Mathews* factors may be well-suited to determining whether due process requires a
8 second bond hearing, they are not particularly dispositive of whether prolonged
9 mandatory detention has become unreasonable in a particular case.”); *D.D. v. LaRose*,
10 *et al.*, Case No. 25-cv-02581-BJC-JLB, ECF No. 10 at 7 (S.D. Cal. Oct. 22, 2025).
11 (considering a similar claim and finding “the three-factor balancing test from *Lopez* . .
12 . provides an appropriate assessment of the possible constitutional implications of
13 Petitioner’s ongoing detention without process.”).

14 Under *Lopez*, to determine whether continued mandatory detention has become
15 unreasonable, “the Court will look to the total length of detention to date, the likely
16 duration of future detention, and the delays in the removal proceedings caused by the
17 petitioner and the government.” 631 F. Supp. 3d at 879.

18 First, Petitioner has been detained for about twelve months. Courts in this district
19 have found detention for much longer periods to be unreasonably prolonged. See
20 *Durand v. Allen*, 23-cv-00279-RBM-BGS, 2024 WL 711607 at *5 (S.D. Cal. Feb. 21,
21 2024) (thirty-two months); *Sibomana v. LaRose*, No. 22-cv-933-LL-NLS, 2023 WL
22 3028093 at *4 (S.D. Cal. Apr. 20, 2023) (nineteen months); *Sanchez-Rivera*, 2023 WL
23 139801 at *6 (three years); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 773 (S.D. Cal. 2020)
24 (twenty-seven months); *Yagao v. Figueroa*, No. 17-CV-2224-AJB-MDD, 2019 WL
25 1429582, at *1 (S.D. Cal. Mar. 29, 2019) (forty-two months). The length of detention
26

27 ³ The Third Circuit “reasonableness” case referenced in Petitioner’s brief is not binding,
28 and in any event, considers substantially similar factors as the *Lopez* test, and for the
reasons discussed below, would also weigh against granting habeas relief in this case.

1 “is the most important factor.” *Sanchez-Rivera*, 2023 WL 139801 at *6 (citation
2 omitted). And Petitioner’s current detention does not fall within the range those courts
3 have found to be unreasonable. Moreover, the length of Petitioner’s detention, by itself,
4 does not favor granting habeas relief. *See Sadeqi v. LaRose*, No. 25-CV-2587-RSH-
5 BJW, 2025 WL 3154520, at *3 (S.D. Cal. Nov. 12, 2025) (“The Court agrees with
6 Respondents that the length of Petitioner’s detention to date—almost 12 months—does
7 not by itself, without more, establish prolonged detention in violation of due process.”).
8 Not only does the length of Petitioner’s detention fall comparatively short of the length
9 courts in this district have found to warrant habeas relief, the other *Lopez* factors do
10 not favor habeas relief either.

11 The likely duration of future detention weighs against Petitioner. An IJ has
12 issued a decision on the merits of her case, and Petitioner’s appeal of the decision is
13 pending with the BIA. While Petitioner claims that her pending appeal would subject
14 her to detention during “a potentially multi-year appeals process,” ECF No. 1 at ¶ 48,
15 she cites nothing to support her claim. The Court should decline Petitioner’s invitation
16 to engage in speculation in this regard. *See, e.g., D.D.*, Case No. 25-cv-02581-BJC-
17 JLB, ECF No. 10 at 8 (addressing “Petitioner’s claim that his detention will continue
18 for a significant time in the future” and “declin[ing] to engage in the speculation that
19 Petitioner relies on in his argument on this point.”).

20 Finally, there is no indication of any delay in the removal proceedings on the
21 part of the government. Petitioner filed her application for asylum and related relief on
22 June 6, 2025, and the IJ promptly scheduled her individual hearing on June 24, 2025.
23 *See* ECF No. 1 at ¶ 15; Exh. 2 at 1 (noting individual hearing date of June 24, 2025).
24 Petitioner’s merits hearing was continued only once, and at her request. *See* Exh. 2.
25 The hearing occurred as rescheduled on October 1, 2025, and the IJ issued a decision
26 that same day. Thus, this factor weighs in favor of Respondents. *See* Exhs. 3, 4.

27 Balancing the above factors, the record does not support a finding that “detention
28 has become so unreasonable as to require an initial bond hearing.” *Sanchez-Rivera*,

1 2023 WL 139801, at *6. Thus, the Court should reject Petitioner’s claim that her
2 mandatory detention violates due process at this time.

3 **V. CONCLUSION**

4 For the reasons stated herein, Respondents respectfully request that the Court
5 dismiss this petition for lack of jurisdiction or deny it on the merits.

6
7 DATED: December 17, 2025

Respectfully submitted,

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