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

11 ZULQUARNAIN AKBAR,

12
13 Petitioner,

14 v.

15 CHRISTOPHER J. LAROSE, et al.,

16
17 Respondents.

Case No. 25-cv-3510-RSH-VET

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

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1 **I. INTRODUCTION**

2 Petitioner requests that the Court order his release from Immigration and
3 Customs Enforcement (ICE) custody. This Court lacks jurisdiction because
4 Petitioner’s claims are barred by 8 U.S.C. § 1252(g). Moreover, Petitioner’s detention
5 is mandated by 8 U.S.C. § 1225(b)(1)(B)(ii) until the conclusion of his removal
6 proceedings. Accordingly, the Court should deny Petitioner’s request for relief.

7 **II. FACTUAL AND PROCEDURAL BACKGROUND**

8 Petitioner is a native and citizen of Pakistan. On November 21, 2024, Petitioner
9 entered the United States without inspection, flagged down an U.S. immigration official
10 and requested asylum near the San Ysidro Port of Entry. *See* ECF 1 at 6-7, Exhibit 1
11 (Form I-213).¹ Petitioner did not then have any valid entry documents to enter the
12 United States, and he was determined to be inadmissible under 8 U.S.C.
13 § 1182(a)(6)(A)(i) and 8 U.S.C. § 1182(a)(7)(A)(i)(I) and placed in expedited removal
14 proceedings pursuant to 8 U.S.C. § 1225(b)(1). *See* Exhibit 2 (Notice to Appear). On
15 December 27, 2024, pursuant to 8 U.S.C. § 1225(b)(1)(B), Petitioner was interviewed
16 by a USCIS asylum officer to determine whether he had a credible fear of persecution
17 or torture if removed to Pakistan. *See* ECF No. 1 at 7. The interview resulted in a
18 positive determination. *See id.*

19 On December 29, 2024, Petitioner was issued a Notice to Appear, charging him
20 as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) (as an alien present without being
21 admitted or paroled) and 8 U.S.C. § 1182(a)(7)(A)(i)(I) (as an immigrant not in
22 possession of a valid entry document). *See* Exhibit 2. The filing of the Notice to Appear
23 with the immigration court initiated removal proceedings, pursuant to 8 U.S.C. § 1229a,
24 against Petitioner, and those proceedings remain ongoing. During the pendency of his
25 removal proceedings under § 1229a, Petitioner has the opportunity to apply for relief

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28 ¹ The attached exhibits are true copies, with redactions of private information, of documents obtained from Immigration and Customs Enforcement (ICE) counsel.

1 from removal before an immigration judge (IJ), including asylum under 8 U.S.C.
2 § 1158, withholding of removal under 8 U.S.C. § 1231(b)(3), and relief under the
3 Convention Against Torture. The Notice to Appear scheduled Petitioner’s initial master
4 calendar hearing for January 9, 2025. *See id.*

5 On February 6, 2025, an immigration judge held a bond hearing and denied bond
6 finding no jurisdiction to consider custody redetermination. *See Exhibit 3 (citing Matter*
7 *of M-S-, 27 I&N Dec. 509 (A.G. 2019)).*

8 On August 29, 2025, Petitioner’s individual merits hearing occurred. *See Exhibit*
9 *4 (Order of the Immigration Judge).* The immigration judge denied Petitioner’s
10 application for asylum, ordered Petitioner removed to South Africa, and Pakistan in the
11 alternative, and granted withholding of removal under 8 U.S.C. § 1231(b)(3). *See id.*
12 On September 10, 2025, Petitioner filed a timely appeal of that removal order to the
13 Board of Immigration Appeals (BIA). *See Exhibit 5 (Notice of Appeal).* The appeal
14 remains pending. As such, there is no administratively final order of removal and
15 Petitioner’s removal proceedings remain ongoing. Accordingly, Petitioner remains
16 mandatorily detained at the Otay Mesa Detention Center under 8 U.S.C. §
17 1225(b)(1)(B)(ii).

18 III. STATUTORY BACKGROUND

19 Section 235 of the Immigration and Nationality Act (INA), codified at 8 U.S.C.
20 § 1225, applies to an “applicant for admission,” defined as an “alien present in the
21 United States who has not been admitted” or “who arrives in the United States.” 8
22 U.S.C. § 1225(a)(1). “[A]pplicants for admission fall into one of two categories, those
23 covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings v. Rodriguez,*
24 *583 U.S. 281, 287 (2018).*

25 Section 1225(b)(1) applies to arriving aliens and “certain other” aliens “initially
26 determined to be inadmissible due to fraud, misrepresentation, or lack of valid
27 document.” *Id.* (citing 8 U.S.C. § 1225(b)(1)(A)(i)). These aliens are generally subject
28 to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if “the alien

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

9 IV. ARGUMENT

10 Petitioner’s habeas petition should be denied because: (1) 28 U.S.C. § 1252(g)
11 bars judicial review over his claim; and (3) he is lawfully detained under the INA and
12 the Constitution.

13 A. Petitioner’s Claim is Barred Under 8 U.S.C. § 1252(g).

14 Respondents contend that judicial review over Petitioner’s claim is barred by 28
15 U.S.C. § 1252(g), which states that “[n]o court shall have jurisdiction to hear any cause
16 or claim by or on behalf of any alien arising from the decision or action by the Attorney
17 General to commence proceedings, adjudicate cases, or execute removal orders.”

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

3 As explained by another district court, removal proceedings are commenced
4 when, as occurred here, “the alien is issued a Notice to Appear before an immigration
5 court.” *Herrera-Correra v. United States*, No. CV 08–2941 DSF (JCx), 2008 WL
6 11336833, at *3 (C.D. Cal. Sept. 11, 2008); *see also* Exhibit 2 (Notice to Appear). The
7 government “may arrest the alien against whom proceedings are commenced and detain
8 that individual until the conclusion of those proceedings.” *Herrera-Correra*, 2008 WL
9 11336833, at *3. “Thus, an alien’s detention throughout this process arises from the
10 [government’s] decision to commence proceedings” and review of claims arising from
11 such detention is barred under section 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d
12 947, 949 (9th Cir. 2007)); *see also Wang*, 2010 WL 11463156, at *6.

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

16 **B. Petitioner is Lawfully Detained Under the INA and the Constitution.**

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

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

21 Petitioner’s claim fails because he is subject to mandatory detention under 8
22 U.S.C. § 1225(b)(1). Under 8 U.S.C. § 1225(a)(1), an “applicant for admission” is
23 defined as an “alien present in the United States who has not been admitted or who
24 arrives in the United States.” As explained above, applicants for admission “fall into
25 one of two categories, those covered by § 1225(b)(1) and those covered by §
26 1225(b)(2).” *Jennings*, 583 U.S. at 287. Section 1225(b)(1) – the provision relevant
27 here – applies because Petitioner was found in the United States without proper
28 documents authorizing his presence. And that statute mandates detention when an

1 immigration officer determines that the alien has a credible fear of persecution. *See* 8
2 U.S.C. § 1225(b)(1)(B)(ii) (“If the officer determines at the time of the interview that
3 [the] alien has a credible fear of persecution . . . , the alien *shall be detained* for further
4 consideration of the application for asylum.”) (emphasis added); *see also Matter of M-*
5 *S*, 27 I. & N. Dec. 509, 519 (AG 2019) (“all aliens transferred from expedited to full
6 [removal] proceedings after establishing a credible fear are ineligible for bond”).

7 Petitioner requests that the Court order him released from ICE custody. But the
8 Supreme Court has rejected such contention, explaining: “Read most naturally, §§
9 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain
10 proceedings have concluded. . . . Nothing in the statutory text imposes any limit on the
11 length of detention. And neither § 1225(b)(1) nor § 1225(b)(2) says anything
12 whatsoever about bond hearings.” *Jennings*, 583 U.S. at 297. Except for temporary
13 parole granted at the discretion of the Attorney General “for urgent humanitarian
14 reasons or significant public benefit” under 8 U.S.C. § 1182(d)(5), “there are no *other*
15 circumstances under which aliens detained under § 1225(b) may be released.” *Id.* at
16 300 (emphasis in original).

17 As Petitioner’s removal proceedings are pending, and he has not been granted
18 temporary parole, section 1225(b)(1)(B) mandates his detention until the proceedings
19 have concluded. *Jennings*, 583 U.S. at 297 (“Once those proceedings end, detention
20 under § 1225(b) must end as well.”). Because Petitioner is lawfully detained under
21 section 1225(b)(1)(B) and the statute does not entitle him to release at this time, his
22 petition must be denied. *See, e.g., Zelaya-Gonzalez v. Matuszewski*, No. 23-CV-151
23 JLS-KSC, 2023 WL 3103811, at *3 (S.D. Cal. April 25, 2023) (applying *Jennings* to
24 find that the petitioner had no right to release or a bond hearing).

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

26 In *Jennings*, the Supreme Court evaluated the proper interpretation of 8 U.S.C.
27 § 1225(b). The Supreme Court stated that, “[r]ead most naturally, [8 U.S.C.]
28 §§ 1225(b)(1) and (b)(2) . . . mandate detention of applicants for admission until certain

1 proceedings have concluded.” *Id.* at 297. In other words, neither 8 U.S.C. § 1225(b)(1)
2 nor § 1225(b)(2) “impose[] any limit on the length of detention” and “neither
3 § 1225(b)(1) nor § 1225(b)(2) say[] anything whatsoever about bond hearings.” *Id.* The
4 Supreme Court added that the sole means of release for noncitizens detained pursuant
5 to 8 U.S.C. §§ 1225(b)(1) or (b)(2) prior to removal from the United States is temporary
6 parole at the discretion of the Attorney General under 8 U.S.C. § 1182(d)(5). *Id.* at 300
7 (“That express exception to detention implies that there are no *other* circumstances
8 under which aliens detained under [8 U.S.C.] § 1225(b) may be released.”) (emphasis
9 in original). “In sum, [8 U.S.C.] §§ 1225(b)(1) and (b)(2) mandate detention of aliens
10 throughout the completion of applicable proceedings[.]” *Id.* at 302.

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

19 In *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 138–40
20 (2020), the Supreme Court once again addressed the due process rights of individuals
21 like Petitioner—inadmissible arriving noncitizens seeking initial entry into the United
22 States. The Supreme Court stated that such individuals have no due process rights
23 “other than those afforded by statute.” *Id.* at 107; *see also id.* at 140 (“[A]n alien in
24 respondent’s position has only those rights regarding admission that Congress has
25 provided by statute.”). The Supreme Court noted that its determination was supported
26 by “more than a century of precedent.” *Id.* at 138 (citing *Nishimura Ekiu v. United*
27 *States*, 142 U.S. 651, 660 (1892); *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537,
28 544 (1950); *Mezei*, 345 U.S. at 212; *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)).

1 Because the only process due Petitioner is that afforded under section 1225(b), the
2 Court must reject his claim that his detention violates the Fifth Amendment’s Due
3 Process Clause and deny his requested relief. *See Thuraissigiam*, 591 U.S. at 138–40;
4 *Mendoza-Linares*, 51 F.4th at 1167; *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206
5 (9th Cir. 2022) (“The recognized liberty interests of U.S. citizens and aliens are not
6 coextensive: the Supreme Court has ‘firmly and repeatedly endorsed the proposition
7 that Congress may make rules as to aliens that would be unacceptable if applied to
8 citizens.’”) (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)); *Zelaya-Gonzalez*,
9 2023 WL 3103811, at *4 (“Binding Ninth Circuit and Supreme Court precedents are
10 clear that Petitioner lacks any rights beyond those conferred by statute, and no statute
11 entitles Petitioner to a bond hearing.”).

12 Since the Supreme Court’s decision in *Thuraissigiam*, numerous published
13 decisions have acknowledged *Thuraissigiam*’s impact on the precise Fifth Amendment
14 Due Process Clause that Petitioner raised in this petition: Does an alien detained under
15 8 U.S.C. § 1225(b)(1) have a due process right to release or a bond hearing after being
16 detained for a certain period of time? The answer is no. *See Mendoza-Linares v.*
17 *Garland*, No. 21-cv-1169-BEN (AHG), 2024 WL 3316306, *2 (S.D. Cal. June 10,
18 2024) (“[T]he Court finds that Petitioner has no Fifth Amendment right to a bond
19 hearing pending his removal proceedings.”); *Zelaya-Gonzalez*, 2023 WL 3103811. *3
20 (S.D. Cal. Apr. 25, 2023) (same); *Rodriguez Figueroa v. Garland*, 535 F. Supp. 3d
21 122, 126–27 (W.D.N.Y. 2021); *Gonzales Garcia v. Rosen*, 513 F. Supp. 3d 329, 336
22 (W.D.N.Y. 2021); *St. Charles v. Barr*, 514 F. Supp. 3d 570, 579 (W.D.N.Y. 2021);
23 *Petgrave v. Aleman*, 529 F. Supp. 3d 665, 667 (S.D. Tex. 2021).

24 Even if the Court infers a constitutional right against prolonged mandatory
25 detention, Petitioner’s claim still fails. “In general, as detention continues past a year,
26 courts become extremely wary of permitting continued custody absent a bond hearing.”
27 *Sibomana v. LaRose*, No. 22-cv-933-LL-NLS, 2023 WL 3028093, at *4 (S.D. Cal.
28 April 20, 2023) (citation omitted); *see also Durand v. Allen*, No. 3:23-cv-00279-RBM-

1 BGS, 2024 WL 711607, at *5 (S.D. Cal. Feb. 21, 2024) (detained over two-and-a-half
2 years); *Sanchez-Rivera v. Matuszewski*, No. 22-cv-1357-MMA (JLB), 2023 WL
3 139801, at *6 (S.D. Cal. Jan. 9, 2023) (three years); *Yagao v. Figueroa*,
4 No. 17-cv-2224-AJB-MDD, 2019 WL 1429582, at *2 (S.D. Cal. March 29, 2019) (two
5 years). Petitioner’s detention falls short of the length courts have found to raise due
6 process concerns.

7 In similar cases, courts in this district have applied the test in *Lopez v. Garland*,
8 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022). *See, e.g., Sanchez-Rivera*, 2023 WL
9 139801, at *5 (“[W]hile the *Mathews* [*v. Eldridge*, 424 U.S. 319 (1976)] factors may
10 be well-suited to determining whether due process requires a second bond hearing, they
11 are not particularly dispositive of whether prolonged mandatory detention has become
12 unreasonable in a particular case.”); *D.D. v. LaRose, et al.*, Case No. 25-cv-02581-
13 BJC-JLB, ECF No. 10 at 7 (S.D. Cal. Oct. 22, 2025) (considering a similar claim and
14 finding “the three-factor balancing test from *Lopez* . . . provides an appropriate
15 assessment of the possible constitutional implications of Petitioner’s ongoing detention
16 without process.”).

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

21 First, at the time of his final merits hearing, which ordered his removal and
22 would have terminated Petitioner’s detention, Petitioner had been detained for about
23 nine months. Courts in this district have found detention for much longer periods to be
24 unreasonably prolonged. *See Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS, 2024
25 WL 711607 at *5 (S.D. Cal. Feb. 21, 2024) (32 months); *Sibomana*, 2023 WL
26 3028093, at *4 (19 months); *Sanchez-Rivera*, 2023 WL 139801 at *6 (three years);
27 *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 773 (S.D. Cal. 2020) (27 months); *Yagao*, 2019
28 WL 1429582, at *1 (42 months). The length of detention “is the most important factor.”

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

11 Second, the likely duration of future detention weighs against Petitioner.
12 Petitioner’s appeal to the BIA is still pending. Once the BIA reaches a decision on the
13 merits of his appeal, the IJ’s order will become administratively final.

14 Finally, there is no indication of any delay in the removal proceedings on the
15 part of the government.

16 Balancing the above factors, the record does not support a finding that “detention
17 has become so unreasonable as to require an initial bond hearing,” *Sanchez-Rivera*,
18 2023 WL 139801, at *6, or an order requiring Petitioner’s release. Thus, the Court
19 should reject Petitioner’s claim that his mandatory detention entitled him to be released
20 from ICE custody during the pendency of his removal proceedings.

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V. CONCLUSION

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

Dated: December 31, 2025

Respectfully submitted,

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s/ Michael Wallace
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