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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

OLGA LIPSKAIA,

Petitioner,

v.

CHRISTOPHER J. LAROSE, et al,

Respondents.

Case No.: 26-cv-3-JLS-VET

RETURN TO PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

Petitioner requests the Court to order her immediate release from Immigration and Customs Enforcement (ICE) custody or require that she be afforded a bond hearing. She grounds her claims in the due process clause. But as an arriving alien and applicant for admission Petitioner's detention is mandated by 8 U.S.C. § 1225(b)(2) until the conclusion of her removal proceedings. The U.S. Constitution does not preclude her detention while proceedings are ongoing. Accordingly, the Court should deny Petitioner's requests for relief.

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a native and citizen of Russia. ECF No. 1 at 1,3 ¶¶ 1, 9. On September 18, 2024, she applied for admission to the United States at a port of entry. *See id.* at 1 ¶ 1. She did not possess legal documentation to be in or enter the United States. *See* Exhibit 1 (Notice to Appear (NTA)). She 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).

She was interviewed by an asylum officer and determined to have a credible fear of persecution in Russia. *See* ECF No. 1 at 7 ¶ 19. On October 22, 2025, Petitioner was issued an NTA. The filing of the NTA initiated removal proceedings against Petitioner, and those proceedings remain ongoing. *Id.* at 7-9 ¶ 24-27. Within her removal proceedings under 8 U.S.C. § 1229a, Petitioner has the opportunity to apply for relief from removal before an immigration judge (IJ), including asylum under 8 U.S.C. § 1158, withholding of removal under 8 U.S.C. § 1231(b)(3), and relief under the Convention Against Torture.

The following chronology is based on agency counsel's review of the Immigration Court's docketing information and on Petitioner's recitation of proceedings. The NTA served on October 22, 2024, scheduled Petitioner's initial master calendar hearing (i.e. the first hearing before an Immigration Judge) for November 4,

2024. Exh. 1. That hearing was re-set for February 6, 2025. At the February 6, 2025, master calendar hearing the Immigration Judge (IJ) set a Merits hearing on July 9, 2025. The merits hearing did not proceed on July 9, 2025; it appears that the immigration court *sua sponte* rescheduled the hearing to September 5, 2025. The September 5, 2025, merits hearing was reset to December 16, 2025, due to Petitioner's Counsel filing evidence the day prior (the evidence was untimely as the filing deadline was June 25, 2025). On December 15, 2025, Respondent's filed a motion to pretermit asylum proceedings in the United States. Dk. 1 at 6 ¶ 22. The December 16, 2025, merits hearing did not proceed, but was instead continued to January 14, 2026, to give Petitioner's counsel to respond to the Motion to Pretermit. *Id.* On December 30, 2025, Petitioner filed a motion to continue the merits hearing claiming a scheduling conflict. Petitioner's removal proceedings remain pending, with a merits hearing is scheduled for January 14, 2026. As of January 7, 2026, Petitioner's Motion to Continue her Merits Hearing remains pending.

There is thus no administrative final order of removal at this time. Because Petitioner is an alien who is an applicant for admission, she remains mandatorily detained at the Otay Mesa Detention Center under 8 U.S.C. § 1225(b)(2)(A). *See* Ex. 1 at 1 (stating Petitioner is "an arriving alien" and has "not been admitted or paroled after inspection by an Immigration Officer"); ECF No 1 at 7 ¶ 18 (stating Petitioner applied for asylum at a port of entry and was detained).

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

Section 1225(b)(2) is "broader" and "serves as a catchall provision." *Jennings*, 583 U.S. at 287. It "applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* Under § 1225(b)(2), an alien "who is an applicant for admission" shall be detained for a removal proceeding "if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A); *Matter of Q. Li*, 29 I&N Dec. 66, 68 (BIA 2025) ("for aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded.'") (citing *Jennings*, 583 U.S. at 299). However, DHS has the sole discretionary authority to temporarily release on parole "any alien applying for admission to the United States" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." *Id.* § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

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IV. ARGUMENT

Petitioner's habeas petition should be denied because 28 U.S.C. § 1252(g) bars judicial review over her claim, and because she is lawfully detained under the INA and the Constitution.

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

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

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

As explained by another district court, removal proceedings are commenced when, as occurred here, "the alien is issued a Notice to Appear before an immigration court." *Herrera-Correra v. United States*, No. CV 08–2941 DSF (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008); *see also* Exhibit 1 (Notice to Appear). The government "may arrest the alien against whom proceedings are commenced and detain that individual until the conclusion of those proceedings." *Herrera-Correra*, 2008 WL 11336833, at *3. "Thus, an alien's detention throughout this process arises from the

[1] "In 2002, Congress transferred the Attorney General's immigration enforcement responsibilities to the Secretary of Homeland Security." *Ibarra-Perez v. United States*, 154 F.4th 989, 995 n.2 (9th Cir. 2025).

[government's] decision to commence proceedings" and review of claims arising from such detention is barred under section 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)); *see also Wang*, 2010 WL 11463156, at *6.

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

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

Even if the Court assumed jurisdiction to review Petitioner's claim, the Court must deny his habeas petition because Petitioner's detention is statutorily mandated under 8 U.S.C. § 1225(b)(2)(A).

1. Petitioner is mandatorily detained under 8 U.S.C. § 1225(b)(2).

Petitioner's claim fails because she is subject to mandatory detention under 8 U.S.C. § 1225(b)(2). Under 8 U.S.C. § 1225(a)(1), an "applicant for admission" is defined as an "alien present in the United States who has not been admitted or who arrives in the United States." As explained above, applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings*, 583 U.S. at 287.

Section 1225(b)(2)(A) requires mandatory detention of "'an alien who is *an applicant for admission*, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted[.]'" *Chavez v. Noem*, No. 3:25-cv-02325, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24, 2025) (quoting 8 U.S.C. § 1225(b)(2)(A)) (emphasis in original). Petitioner contends that she is entitled to a bond hearing. But the Supreme Court has rejected such contention, explaining: "Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded. . . . 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." *Jennings*, 583 U.S. at 297. Except for temporary parole granted at the discretion of the Attorney General "for

urgent humanitarian reasons or significant public benefit" under 8 U.S.C. § 1182(d)(5), "there are no *other* circumstances under which aliens detained under § 1225(b) may be released." *Id.* at 300 (emphasis in original).

As Petitioner's removal proceedings are pending, and she has not been granted temporary parole, section 1225(b)(2) mandates her detention until the proceedings have concluded. *Jennings*, 583 U.S. at 297 ("Once those proceedings end, detention under § 1225(b) must end as well."). Because Petitioner is lawfully detained under section 1225(b) and the statute does not entitle her to a bond hearing at this time, her petition must be denied. *See, e.g.*, *Zelaya-Gonzalez v. Matuszewski*, No. 23-CV-151 JLS-KSC, 2023 WL 3103811, at *3 (S.D. Cal. April 25, 2023) (applying *Jennings* to find that the petitioner had no right to release or a bond hearing under 1225(b)(1) because "[b]inding Ninth Circuit and Supreme Court precedents are clear that Petitioner lacks any rights beyond those conferred by statute, and no statute entitles Petitioner to a bond hearing").

2. Petitioner's detention does not violate due process.

Petitioner also argues that her mandatory detention under the INA violates the due process clause of the Fifth Amendment to the U.S. Constitution. The Court should reject this argument.

In *Jennings*, the Supreme Court evaluated the proper interpretation of 8 U.S.C. § 1225(b). The Supreme Court stated that, "[r]ead most naturally, [8 U.S.C.] §§ 1225(b)(1) and (b)(2) . . . mandate detention of applicants for admission until certain proceedings have concluded." *Id.* at 297. In other words, neither 8 U.S.C. § 1225(b)(1) nor § 1225(b)(2) "impose[] any limit on the length of detention" and "neither § 1225(b)(1) nor § 1225(b)(2) say[] anything whatsoever about bond hearings." *Id.* The Supreme Court added that the sole means of release for noncitizens detained pursuant to 8 U.S.C. §§ 1225(b)(1) or (b)(2) prior to removal from the United States is temporary parole at the discretion of the Attorney General under 8 U.S.C. § 1182(d)(5). *Id.* at 300 ("That express exception to detention implies that there are no *other* circumstances

under which aliens detained under [8 U.S.C.] § 1225(b) may be released.") (emphasis in original). "In sum, [8 U.S.C.] §§ 1225(b)(1) and (b)(2) mandate detention of aliens throughout the completion of applicable proceedings[.]" *Id.* at 302.

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

In *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 138–40 (2020), the Supreme Court once again addressed the due process rights of individuals like Petitioner—inadmissible arriving noncitizens seeking initial entry into the United States. The Supreme Court stated that such individuals have no due process rights "other than those afforded by statute." *Id.* at 107; *see also id.* at 140 ("[A]n alien in respondent's position has only those rights regarding admission that Congress has provided by statute."). The Supreme Court noted that its determination was supported by "more than a century of precedent." *Id.* at 138 (citing *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892); *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950); *Mezei*, 345 U.S. at 212; *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)). Because the only process due Petitioner is that afforded under section 1225(b), the Court must reject her claim that her detention violates the Fifth Amendment's Due Process Clause and deny her requested relief. *See Thuraissigiam*, 591 U.S. at 138–40; *Mendoza-Linares*, 51 F.4th at 1167; *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) ("The recognized liberty interests of U.S. citizens and aliens are not coextensive: the Supreme Court has 'firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to

citizens.'") (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)); *Zelaya-Gonzalez*, 2023 WL 3103811, at *4 ("Binding Ninth Circuit and Supreme Court precedents are clear that Petitioner lacks any rights beyond those conferred by statute, and no statute entitles Petitioner to a bond hearing.").

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). Petitioner's detention falls significantly short of the length courts have found to raise due process concerns.

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.

Petitioner has been detained for approximately 16 months. Courts in this district have found detention for much longer periods 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). And Petitioner's current detention does not fall within the range those 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."). Not only does the length of Petitioner's detention fall comparatively short of the length courts in this district have found to warrant habeas relief, but the other *Lopez* factors do not favor habeas relief either.

Petitioner relies on *Zadvydas*, 533 U.S. at 690, to assert that the Due Process Clause imposes a limit on the amount of time an individual can be held without bond during removal proceedings. Dk. 1 at 8, ¶ 29. *Zadvydas* did not concern detention while removal proceedings were ongoing. To the contrary, it concerned aliens who had been ordered removed but could not be removed in the "reasonably foreseeable" future. *Zadvydas*, 533 U.S. at 685. *Zadvydas* recognized that once an alien has been ordered removed, he or she cannot be detained indefinitely where removal is not "reasonably foreseeable." 533 U.S. at 685. *Zadvydas* did not imply a constitutional right to release while removal proceedings are ongoing.[2]

[2] *Zadvydas* specifically concerned two individuals who were subject to final orders of removal where there were implications of the impossibility of repatriation. Zadvydas was stateless and both countries to which he potentially could have been deported (the

As this Court recently recognized, "*Zadvydas* due process analysis does not begin until the close of the statutory 90-day removal period." *Rios v. U.S. Department of Homeland Security*, 2025 WL 3022854, at *3 (S.D. Cal. Oct. 29, 2025) (citing *Zadvydas*, 533 U.S. at 682); *see also Jennings v. Rodriguez*, 583 U.S. 281, 308–09 (2018) ("*Zadvydas* concerned § 1231(a)(6), which authorizes the detention of aliens who have already been ordered removed from the country."). *Zadvydas* does not apply to aliens, such as Petitioner, whose proceedings are ongoing.

Petitioner was detained when she applied for admission to the United States. She is thus an applicant for admission, and her mandatory detention does not violate due process. *See Shahin v. Noem*, No. 25-cv-2496-AGS-KSC, ECF No. 12 (S.D. Cal. Dec. 23, 2025).

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: January 6, 2026

Respectfully submitted,

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country where he was born and the country of which his parents were citizens) refused to accept him because he was not a citizen. *See Zadvydas*, 533 U.S. at 684. The deportation of the other petitioner in *Zadvydas*, Ma, was prevented because there was no repatriation agreement at that time between the United States and Cambodia. *Id.* at 685.