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

10
11 SABER SAFINEJAD,
12
13 **Petitioner,**

Case No.: 26CV0531 JES AHG

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

14 v.

15 CHRISTOPHER LAROSE,
16 Facility senior warden at the Otay
Mesa Detention Facility, et.al.,
17
18 **Respondents.**

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20 **I. INTRODUCTION**

21 Petitioner asks the Court to order the agency to provide him a bond hearing. As
22 an arriving alien and applicant for admission, however, Petitioner's detention is
23 mandated by 8 U.S.C. § 1225(b)(2) until the conclusion of his removal proceedings.
24 Accordingly, the Court should deny Petitioner's requests for relief.

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1 **II. FACTUAL AND PROCEDURAL BACKGROUND¹**

2 Petitioner is a citizen of Iran, who unlawfully entered the U.S. on February 21,
3 2025, through the Rio Grande Valley in Texas. He was apprehended by Border Patrol
4 the same day and was issued an Expedited Removal order under the 212(f)
5 proclamation. Petitioner claimed he feared returning to Iran and was referred to USCIS
6 for a Convention Against Torture (CAT) deferral interview, which resulted in a
7 determination that he failed to establish it was more likely than not he would be tortured
8 if returned to Iran. On March 21, 2025, Petitioner reasserted a fear of returning to Iran
9 and was referred for a second CAT deferral interview on April 2, 2025. Following the
10 second interview on Apr. 9, 2025, the agency determined Petitioner established it is
11 more likely than not he would be tortured in Iran.

12 Petitioner was issued a Notice to Appear on July 7, 2025, charging him as
13 inadmissible under INA §§ 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I). On January 8, 2026,
14 the Immigration Judge denied asylum, CAT and withholding of removal relief and
15 ordered Petitioner removed to Iran. Petitioner filed an appeal with the BIA on January
16 22, 2026; the appeal is pending.

17 **III. STATUTORY BACKGROUND**

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

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

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¹ The facts and procedural history set forth herein were provided by ICE counsel.

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

10 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*,
11 583 U.S. at 287. It “applies to all applicants for admission not covered by §
12 1225(b)(1).” *Id.* Under § 1225(b)(2), an alien “who is an applicant for admission” shall
13 be detained for a removal proceeding “if the examining immigration officer determines
14 that [the] alien seeking admission is not clearly and beyond a doubt entitled to be
15 admitted.” 8 U.S.C. § 1225(b)(2)(A); *Matter of Q. Li*, 29 I&N Dec. 66, 68 (BIA 2025)
16 (“for aliens arriving in and seeking admission into the United States who are placed
17 directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. §
18 1225(b)(2)(A), mandates detention ‘until removal proceedings have concluded.’”) (citing
19 *Jennings*, 583 U.S. at 299). However, DHS has the sole discretionary authority
20 to temporarily release on parole “any alien applying for admission to the United States”
21 on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.”
22 *Id.* § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

23 IV. ARGUMENT

24 Petitioner’s habeas petition should be denied because 28 U.S.C. § 1252(g) bars
25 judicial review over his claim, and because he is lawfully detained under the INA and
26 the Constitution.

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

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

6 Here, Petitioner’s claims of unlawful detention necessarily arise from the
7 Department of Homeland Security’s² decision to commence removal proceedings
8 against him because that decision unavoidably triggers mandatory detention under 8
9 U.S.C. § 1225(b)(2) until the conclusion of his removal proceedings. *See, e.g., Wang v.*
10 *United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at *6 (C.D. Cal. Aug.
11 18, 2010) (finding section 1252(g) bars judicial review of false imprisonment claim
12 because the plaintiff’s detention arose from the decision to commence removal
13 proceedings, and in turn, the “statute mandating detention during removal proceedings
14 of a person charged as an ‘arriving alien.’”).

15 As explained by another district court, removal proceedings are commenced
16 when, as occurred here, “the alien is issued a Notice to Appear before an immigration
17 court.” *Herrera-Correra v. United States*, No. CV 08–2941 DSF (JCx), 2008 WL
18 11336833, at *3 (C.D. Cal. Sept. 11, 2008); *see also* Exhibit 6 (Notice to Appear). The
19 government “may arrest the alien against whom proceedings are commenced and detain
20 that individual until the conclusion of those proceedings.” *Herrera-Correra*, 2008 WL
21 11336833, at *3. “Thus, an alien’s detention throughout this process arises from the
22 [government’s] decision to commence proceedings” and review of claims arising from
23 such detention is barred under section 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d
24 947, 949 (9th Cir. 2007)); *see also Wang*, 2010 WL 11463156, at *6.

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

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

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

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

9 Petitioner’s claim fails because he is subject to mandatory detention under 8
10 U.S.C. § 1225(b)(2). Under 8 U.S.C. § 1225(a)(1), an “applicant for admission” is
11 defined as an “alien present in the United States who has not been admitted or who
12 arrives in the United States.” As explained above, applicants for admission “fall into
13 one of two categories, those covered by § 1225(b)(1) and those covered by §
14 1225(b)(2).” *Jennings*, 583 U.S. at 287.

15 Section 1225(b)(2)(A) requires mandatory detention of “an alien who is *an*
16 *applicant for admission*, if the examining immigration officer determines that an alien
17 seeking admission is not clearly and beyond a doubt entitled to be admitted[.]” *Chavez*
18 *v. Noem*, No. 3:25-cv-02325, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24, 2025)
19 (quoting 8 U.S.C. § 1225(b)(2)(A)) (emphasis in original). Petitioner contends that he
20 is entitled to a bond hearing. But the Supreme Court has rejected such contention,
21 explaining: “Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of
22 applicants for admission until certain proceedings have concluded. . . . Nothing in the
23 statutory text imposes any limit on the length of detention. And neither § 1225(b)(1)
24 nor § 1225(b)(2) says anything whatsoever about bond hearings.” *Jennings*, 583 U.S. at
25 297. Except for temporary parole granted at the discretion of the Attorney General “for
26 urgent humanitarian reasons or significant public benefit” under 8 U.S.C. § 1182(d)(5),
27 “there are no *other* circumstances under which aliens detained under § 1225(b) may be
28 released.” *Id.* at 300 (emphasis in original).

1 As Petitioner’s removal proceedings are pending, and he has not been granted
2 temporary parole, section 1225(b)(2) mandates his detention until the proceedings have
3 concluded. *Jennings*, 583 U.S. at 297 (“Once those proceedings end, detention under
4 § 1225(b) must end as well.”). Because Petitioner is lawfully detained under
5 section 1225(b)(2) and the statute does not entitle him to a bond hearing at this time, his
6 petition must be denied. *See, e.g., Zelaya-Gonzalez v. Matuszewski*, No. 23-CV-151
7 JLS-KSC, 2023 WL 3103811, at *3 (S.D. Cal. April 25, 2023) (applying *Jennings* to
8 find that the petitioner had no right to release or a bond hearing).

9 **2. Petitioner’s detention does not violate due process.**

10 In *Jennings*, the Supreme Court evaluated the proper interpretation of 8 U.S.C.
11 § 1225(b). The Supreme Court stated that, “[r]ead most naturally, [8 U.S.C.]
12 §§ 1225(b)(1) and (b)(2) . . . mandate detention of applicants for admission until certain
13 proceedings have concluded.” *Id.* at 297. In other words, neither 8 U.S.C. § 1225(b)(1)
14 nor § 1225(b)(2) “impose[] any limit on the length of detention” and “neither
15 § 1225(b)(1) nor § 1225(b)(2) say[] anything whatsoever about bond hearings.” *Id.* The
16 Supreme Court added that the sole means of release for noncitizens detained pursuant
17 to 8 U.S.C. §§ 1225(b)(1) or (b)(2) prior to removal from the United States is temporary
18 parole at the discretion of the Attorney General under 8 U.S.C. § 1182(d)(5). *Id.* at 300
19 (“That express exception to detention implies that there are no *other* circumstances
20 under which aliens detained under [8 U.S.C.] § 1225(b) may be released.”) (emphasis
21 in original). “In sum, [8 U.S.C.] §§ 1225(b)(1) and (b)(2) mandate detention of aliens
22 throughout the completion of applicable proceedings[.]” *Id.* at 302.

23 In *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 207–09 (1953), a
24 noncitizen in exclusion proceedings filed a habeas petition claiming that his prolonged
25 detention without a hearing violated his constitutional rights. The Supreme Court
26 rejected the petition, concluding that the noncitizen’s continued detention did not
27 deprive him of any due process rights, stating: “[A]n alien on the threshold of initial
28 entry stands on a different footing: ‘Whatever the procedure authorized by Congress

1 is, it is due process as far as an alien denied entry is concerned.” *Id.* at 212 (citation
2 omitted).

3 In *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 138–40
4 (2020), the Supreme Court once again addressed the due process rights of individuals
5 like Petitioner—inadmissible arriving noncitizens seeking initial entry into the United
6 States. The Supreme Court stated that such individuals have no due process rights
7 “other than those afforded by statute.” *Id.* at 107; *see also id.* at 140 (“[A]n alien in
8 respondent’s position has only those rights regarding admission that Congress has
9 provided by statute.”). The Supreme Court noted that its determination was supported
10 by “more than a century of precedent.” *Id.* at 138 (citing *Nishimura Ekiu v. United*
11 *States*, 142 U.S. 651, 660 (1892); *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537,
12 544 (1950); *Mezei*, 345 U.S. at 212; *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)).
13 Because the only process due Petitioner is that afforded under section 1225(b), the
14 Court must reject his claim that his detention violates the Fifth Amendment’s Due
15 Process Clause and deny his requested relief. *See Thuraissigiam*, 591 U.S. at 138–40;
16 *Mendoza-Linares*, 51 F.4th at 1167; *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206
17 (9th Cir. 2022) (“The recognized liberty interests of U.S. citizens and aliens are not
18 coextensive: the Supreme Court has ‘firmly and repeatedly endorsed the proposition
19 that Congress may make rules as to aliens that would be unacceptable if applied to
20 citizens.’”) (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)); *Zelaya-Gonzalez*,
21 2023 WL 3103811, at *4 (“Binding Ninth Circuit and Supreme Court precedents are
22 clear that Petitioner lacks any rights beyond those conferred by statute, and no statute
23 entitles Petitioner to a bond hearing.”).

24 Since the Supreme Court’s decision in *Thuraissigiam*, numerous published
25 decisions have acknowledged *Thuraissigiam*’s impact on the precise Fifth Amendment
26 Due Process Clause that Petitioner might have raised in this petition: Does an alien
27 detained under 8 U.S.C. § 1225(b)(1) have a due process right to release or a bond
28 hearing after being detained for a certain period of time? The answer is no. *See*

1 *Mendoza-Linares v. Garland*, No. 21-cv-1169-BEN (AHG), 2024 WL 3316306, *2
2 (S.D. Cal. June 10, 2024) (“[T]he Court finds that Petitioner has no Fifth Amendment
3 right to a bond hearing pending his removal proceedings.”); *Zelaya-Gonzalez*, 2023
4 WL 3103811. *3 (S.D. Cal. Apr. 25, 2023) (same); *Rodriguez Figueroa v. Garland*,
5 535 F. Supp. 3d 122, 126–27 (W.D.N.Y. 2021); *Gonzales Garcia v. Rosen*, 513 F.
6 Supp. 3d 329, 336 (W.D.N.Y. 2021); *St. Charles v. Barr*, 514 F. Supp. 3d 570, 579
7 (W.D.N.Y. 2021); *Petgrave v. Aleman*, 529 F. Supp. 3d 665, 667 (S.D. Tex. 2021).

8 Even if the Court infers a constitutional right against prolonged mandatory
9 detention, Petitioner’s claim still fails. “In general, as detention continues past a year,
10 courts become extremely wary of permitting continued custody absent a bond hearing.”
11 *Sibomana v. LaRose*, No. 22-cv-933-LL-NLS, 2023 WL 3028093, at *4 (S.D. Cal.
12 April 20, 2023) (citation omitted); *see also Durand v. Allen*, No. 3:23-cv-00279-RBM-
13 BGS, 2024 WL 711607, at *5 (S.D. Cal. Feb. 21, 2024) (detained over two-and-a-half
14 years); *Sanchez-Rivera v. Matuszewski*, No. 22-cv-1357-MMA (JLB), 2023 WL
15 139801, at *6 (S.D. Cal. Jan. 9, 2023) (three years); *Yagao v. Figueroa*,
16 No. 17-cv-2224-AJB-MDD, 2019 WL 1429582, at *2 (S.D. Cal. March 29, 2019) (two
17 years). Petitioner’s detention falls short of the length courts have found to raise due
18 process concerns.

19 In similar cases, courts in this district have applied the test in *Lopez v. Garland*,
20 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022). *See, e.g., Sanchez-Rivera*, 2023 WL 139801,
21 at *5; *D.D. v. LaRose, et al.*, Case No. 25-cv-02581-BJC-JLB, ECF No. 10 at 7 (S.D.
22 Cal. Oct. 22, 2025) (considering a similar claim and finding “the three-factor balancing
23 test from *Lopez* . . . provides an appropriate assessment of the possible constitutional
24 implications of Petitioner’s ongoing detention without process.”).

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

1 First, Petitioner has been detained for just over 11 months. Courts in this district
2 have found detention for much longer periods to be unreasonably prolonged. *See*
3 *Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS, 2024 WL 711607 at *5 (S.D. Cal.
4 Feb. 21, 2024) (32 months); *Sibomana*, 2023 WL 3028093, at *4 (19 months);
5 *Sanchez-Rivera*, 2023 WL 139801 at *6 (three years); *Kydyrali v. Wolf*, 499 F. Supp.
6 3d 768, 773 (S.D. Cal. 2020) (27 months); *Yagao*, 2019 WL 1429582, at *1 (42
7 months). The length of detention “is the most important factor.” *Sanchez-Rivera*, 2023
8 WL 139801, at *6 (citation omitted). Moreover, the length of Petitioner’s detention, by
9 itself, does not favor granting habeas relief. *See Sadeqi v. LaRose*, No. 25-cv-2587-
10 RSH-BJW, 2025 WL 3154520, at *3 (S.D. Cal. Nov. 12, 2025) (“The Court agrees
11 with Respondents that the length of Petitioner’s detention to date—almost 12 months—
12 does not by itself, without more, establish prolonged detention in violation of due
13 process.”). Not only does the length of Petitioner’s detention fall comparatively short
14 of the length courts in this district have found to warrant habeas relief, but the other
15 *Lopez* factors do not favor habeas relief either. He has already received a merits hearing
16 and there is no indication of any delay in the removal proceedings on the part of the
17 government.

18 Balancing the above factors, the record does not support a finding that “detention
19 has become so unreasonable as to require an initial bond hearing,” *Sanchez-Rivera*,
20 2023 WL 139801, at *6, or an order requiring Petitioner’s release.

21 Petitioner was lawfully detained when he applied for admission to the United
22 States. As a result, Petitioner is rightly considered an applicant for admission, and his
23 mandatory detention does not violate due process. *See Markov v. LaRose*, No. 25-CV-
24 3811 JLS (SBC), 2026 WL 92069 (S.D. Cal. Jan. 13, 2026) (“Petitioner’s length of
25 detention, without more, does not render his detention unreasonable.”); *Duran Romero*
26 *v. LaRose*, No. 25-cv-3567-AGS-VET, ECF No. 7 (S.D. Cal. Jan. 14, 2026); *Shahin v.*
27 *Noem*, No. 25-cv-2496-AGS-KSC, ECF No. 12 (S.D. Cal. Dec. 23, 2025); *Cordova*
28 *Cordova*, No. 25-cv-2426-BAS-DDL, ECF No. 9 (S.D. Cal. Nov. 14, 2025); *Mendez*

1 *Ramirez*, 612 F. Supp. 3d at 221; *Gonzalez Aguilar v. Wolf*, 448 F. Supp. 3d at 1212;
2 *de la Rosa Espinoza*, 2020 WL 3452967, at *6-8.

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: February 2, 2026

Respectfully submitted,

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