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

10 YUNDONG XIE,

11 Petitioner,

12 v.

13 CHRISTOPHER LAROSE, Warden of
Otay Mesa Detention Center DANIEL A.
14 BRIGHTMAN, San Diego Field Office
Director, Immigration and Customs
15 Enforcement and Removal Operations
("ICE/ERO"); TODD LYONS, Acting
16 Director of Immigration Customs
Enforcement ("ICE"); KRISTI NOEM,
17 Secretary of the Department of Homeland
Security ("DHS"); PAMELA BONDI,
18 Attorney General of the United States,
19 U.S. DEPARTMENT OF HOMELAND
SECURITY; U.S. IMMIGRATION AND
20 CUSTOMS ENFORCEMENT,

21 Respondents.

Case No.: 26-cv-0529 CAB (DDL)

RESPONSE TO PETITION

22 **INTRODUCTION**

23 Petitioner requests the Court to order his immediate release from Immigration
24 and Customs Enforcement (ICE) custody or require that he be afforded a bond hearing.
25 As an arriving alien found to have a credible fear of persecution, however, Petitioner's
26 detention is mandated by 8 U.S.C. § 1225(b)(1)(B)(ii) until the conclusion of his
27 removal proceedings. As Petitioner is subject to mandatory detention under 8 U.S.C. §
28 1225(b)(1)(B)(ii), the Court should deny Petitioner's requests for relief.

1 **BACKGROUND¹**

2 Petitioner, a citizen of China, entered the United States pursuant to a Customs
3 and Border Protection “CBP One” appointment on January 5, 2025. Petition at p.7, ECF
4 No. 1. He was processed at the border on January 6, 2025 and has been detained at the
5 Otay Mesa Detention Center since that time. *Id.* Following a credible fear interview
6 finding, Petitioner was placed in removal proceedings, which are ongoing. *Id.*

7 As more fully set forth below, as an arriving alien who expressed a fear of
8 persecution and whose removal proceedings are ongoing, Plaintiff is properly detained
9 under 8 U.S.C. § 1225(b)(1). While Petitioner complains of government delays in his
10 removal proceedings, records reflect it was Petitioner or his counsel who created
11 numerous delays. On February 13, 2025, Petitioner requested a continuance to find an
12 attorney. On April 17, 1925, he asked for a lengthy 2-month continuance to file his
13 relief application. At the next hearing on June 11, 2025, he again requested more time
14 because he found an attorney, who did not appear, and his application was not ready.
15 Petitioner filed his application for relief on June 25, 2025, 5 months after he was placed
16 into proceedings. The September 26, 2025 merits hearing was postponed because the
17 Petitioner’s counsel was unable to appear so the case again had to be continued. The
18 merits hearing is now set for May 20, 2026.

19 **STATUTORY BACKGROUND**

20 Section 235 of the Immigration and Nationality Act (INA), codified at 8 U.S.C.
21 § 1225, applies to an “applicant for admission,” defined as an “alien present in the
22 United States who has not been admitted” or “who arrives in the United States.” 8
23 U.S.C. § 1225(a)(1). “[A]pplicants for admission fall into one of two categories, those
24 covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings v. Rodriguez*,
25 583 U.S. 281, 287 (2018).

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¹ The information below was obtained from a ICE counsel, who conducted a thorough review of agency records.

1 Section 1225(b)(1) applies to arriving aliens and “certain other” aliens “initially
2 determined to be inadmissible due to fraud, misrepresentation, or lack of valid
3 document.” *Id.* (citing 8 U.S.C. § 1225(b)(1)(A)(i)). These aliens are generally subject
4 to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if “the alien
5 indicates an intention to apply for asylum . . . or a fear of persecution,” immigration
6 officers will refer the alien for a credible fear interview. 8 U.S.C. § 1225(b)(1)(A)(ii).
7 “If the officer determines at the time of the interview that [the] alien has a credible fear
8 of persecution . . . , the alien *shall be detained* for further consideration of the
9 application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii) (emphasis added). If the alien
10 does not indicate an intent to apply for asylum, does not express a fear of persecution,
11 or is “found not to have such a fear,” they “shall be detained . . . until removed” from
12 the United States. 8 U.S.C. §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

13 ARGUMENT

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

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

19 Here, Petitioner’s claims of unlawful detention necessarily arise from the
20 Department of Homeland Security’s² decision to commence removal proceedings
21 against him because that decision unavoidably triggers mandatory detention under 8
22 U.S.C. § 1225(b)(1)(B)(ii) until the conclusion of his removal proceedings. *See, e.g.,*
23 *Wang v. United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at *6 (C.D.
24 Cal. Aug. 18, 2010) (finding section 1252(g) bars judicial review of false imprisonment
25 claim because the plaintiff’s detention arose from the decision to commence removal
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28 ² “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).

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 3 (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 is an arriving alien. *See* Petition at p.7, ECF No. 1 (noting Petitioner
22 “entered the United States pursuant to a CBP One appointment on January 5, 2025).
23 As discussed above, arriving aliens are applicants for admission who are subject to
24 expedited removal proceedings, *see* 28 U.S.C. § 1225(b)(1)(A)(i), unless—as occurred
25 here—an asylum officer has determined that they have a credible fear of persecution,
26 *see* 28 U.S.C. § 1225(b)(1)(B)(ii). In such cases, the INA mandates that “the alien *shall*
27 *be detained* for further consideration of the application for asylum.” 8 U.S.C.
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1 § 1225(b)(1)(B)(ii) (emphasis added); *see also Matter of M-S*, 27 I. & N. Dec. 509, 519
2 (AG 2019) (“all aliens transferred from expedited to full [removal] proceedings after
3 establishing a credible fear are ineligible for bond”). Because Petitioner is an arriving
4 alien found to have a credible fear of persecution and placed in full removal
5 proceedings, his detention is mandated by section 1225(b) until the conclusion of his
6 removal proceedings. *See Jennings*, 583 U.S. at 302 (“§§ 1225(b)(1) and (b)(2)
7 mandate detention of aliens throughout the completion of applicable proceedings”).

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

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

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

27 In *Jennings*, the Supreme Court evaluated the proper interpretation of 8 U.S.C.
28

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

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

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

1 *States*, 142 U.S. 651, 660 (1892); *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537,
2 544 (1950); *Mezei*, 345 U.S. at 212; *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)).
3 Because the only process due Petitioner is that afforded under section 1225(b), the
4 Court must reject his claim that his detention violates the Fifth Amendment’s Due
5 Process Clause and deny his requested relief. *See Thuraissigiam*, 591 U.S. at 138–40;
6 *Mendoza-Linares*, 51 F.4th at 1167; *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206
7 (9th Cir. 2022) (“The recognized liberty interests of U.S. citizens and aliens are not
8 coextensive: the Supreme Court has ‘firmly and repeatedly endorsed the proposition
9 that Congress may make rules as to aliens that would be unacceptable if applied to
10 citizens.’”) (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)); *Zelaya-Gonzalez*,
11 2023 WL 3103811, at *4 (“Binding Ninth Circuit and Supreme Court precedents are
12 clear that Petitioner lacks any rights beyond those conferred by statute, and no statute
13 entitles Petitioner to a bond hearing.”).

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

26 Even if the Court infers a constitutional right against prolonged mandatory
27 detention, Petitioner’s claim still fails. Respondents acknowledge that various courts
28 have expressed reservations about permitting continued custody beyond a year absent

1 a bond hearing. *See Sibomana v. LaRose*, No. 22-cv-933-LL-NLS, 2023 WL 3028093,
2 at *4 (S.D. Cal. April 20, 2023) (citation omitted). But courts have tended to intervene
3 when detentions are far longer than that at issue here, based on a variety of factors. *See*
4 *Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS, 2024 WL 711607, at *5 (S.D. Cal.
5 Feb. 21, 2024) (detained over two-and-a-half years); *Sanchez-Rivera v. Matuszewski*,
6 No. 22-cv-1357-MMA (JLB), 2023 WL 139801, at *6 (S.D. Cal. Jan. 9, 2023) (three
7 years); *Yagao v. Figueroa*, No. 17-cv-2224-AJB-MDD, 2019 WL 1429582, at
8 *2 (S.D. Cal. March 29, 2019) (two years). Petitioner’s detention falls significantly
9 short of the length these courts have found to raise due process concerns.

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

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

24 First, Petitioner has been detained for about 13 months. Courts in this district
25 have found detention for much longer periods to be unreasonably prolonged. *See*
26 *Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS, 2024 WL 711607 at *5 (S.D. Cal.
27 Feb. 21, 2024) (32 months); *Sibomana*, 2023 WL 3028093, at *4 (19 months);
28 *Sanchez-Rivera*, 2023 WL 139801 at *6 (three years); *Kydyrali v. Wolf*, 499 F. Supp.

1 3d 768, 773 (S.D. Cal. 2020) (27 months); *Yagao*, 2019 WL 1429582, at *1 (42
2 months). The length of detention “is the most important factor.” *Sanchez-Rivera*, 2023
3 WL 139801, at *6 (citation omitted). And Petitioner’s current detention does not fall
4 within the range those courts have found to be unreasonable. Moreover, the length of
5 Petitioner’s detention, by itself, does not favor granting habeas relief. *See Sadeqi v.*
6 *LaRose*, No. 25-cv-2587-RSH-BJW, 2025 WL 3154520, at *3 (S.D. Cal. Nov. 12,
7 2025) (“The Court agrees with Respondents that the length of Petitioner’s detention to
8 date—almost 12 months—does not by itself, without more, establish prolonged
9 detention in violation of due process.”). Not only does the length of Petitioner’s
10 detention fall comparatively short of the length several courts in this district have found
11 to warrant habeas relief, but the other *Lopez* factors do not favor habeas relief either.
12 Petitioner’s individual merits hearing is scheduled for May 20, 2026 (*see* ECF No. 1 at
13 2), at which point his path to release or removal should be clear. Moreover, any undue
14 delay was not caused by the government; Petitioner’s merits hearing would have
15 occurred in September 2025 had it not been for the unavailability of Petitioner’s
16 counsel. Balancing the above factors, the record does not support a finding that
17 “detention has become so unreasonable as to require an initial bond hearing,” *Sanchez-*
18 *Rivera*, 2023 WL 139801, at *6, or an order requiring Petitioner’s release.

19 Petitioner was lawfully detained when he applied for admission to the United
20 States. As an applicant for admission, his mandatory detention does not violate due
21 process. *See Markov v. LaRose*, No. 25-CV-3811 JLS (SBC), 2026 WL 92069 (S.D.
22 Cal. Jan. 13, 2026) (“Petitioner’s length of detention, without more, does not render his
23 detention unreasonable.”); *Duran Romero v. LaRose*, No. 25-cv-3567-AGS-VET, ECF
24 No. 7 (S.D. Cal. Jan. 14, 2026); *Shahin v. Noem*, No. 25-cv-2496-AGS-KSC, ECF No.
25 12 (S.D. Cal. Dec. 23, 2025); *Cordova Cordova*, No. 25-cv-2426-BAS-DDL, ECF No.
26 9 (S.D. Cal. Nov. 14, 2025); *Mendez Ramirez*, 612 F. Supp. 3d at 221; *Gonzalez Aguilar*
27 *v. Wolf*, 448 F. Supp. 3d at 1212; *de la Rosa Espinoza*, 2020 WL 3452967, at *6-8.

1 **CONCLUSION**

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

4
5 DATED: February 6, 2026

Respectfully submitted,

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7 United States Attorney

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