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

10
11 MOHAMMAD KHAZAEI,

12
13 Petitioner,

14 v.

15 PATRICK DIVVER, Field Office
16 Director of Enforcement and Removal
Operations, San Diego Field Office,
17 Immigration and Customs Enforcement,
18 *et al.*,

19 Respondents.
20

Case No.: 26-cv-00624-TWR-VET

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

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24 **I. INTRODUCTION**

25 Petitioner requests that the Court order his release from Immigration and Customs
26 Enforcement (ICE) custody. This Court lacks jurisdiction because Petitioner's claims
27 are barred by 8 U.S.C. § 1252(g). Moreover, as an applicant for admission to the United
28 States found to have a credible fear of persecution, Petitioner's detention is mandated

1 by 8 U.S.C. § 1225(b)(1)(B)(ii) until the conclusion of his removal proceedings.
2 Accordingly, the Court should deny Petitioner's request for relief.

3 **II. FACTUAL AND PROCEDURAL BACKGROUND**

4 Petitioner is a native and citizen of Iran, who entered the United States without
5 inspection near San Ysidro, California, on March 25, 2025. *See* ECF No. 1 at 5; Exhibit
6 A (Form I-213).¹ Petitioner did not then have any valid entry documents to enter the
7 United States. He was determined to be inadmissible under 8 U.S.C.
8 § 1182(a)(7)(A)(i)(I), placed in expedited removal proceedings pursuant to 8 U.S.C. §
9 1225(b)(1), and taken into Immigration and Customs Enforcement (ICE) custody
10 pursuant to 8 U.S.C. § 1225(b)(1)(B). *See* Exhibit B (Notice and Order of Expedited
11 Removal). He was then interviewed by an asylum officer, pursuant to 8 U.S.C.
12 § 1225(b)(1)(B). After receiving a positive credible fear determination, Petitioner was
13 issued a Notice to Appear (NTA) on July 8, 2025. Exhibit C. The filing of the NTA
14 initiated removal proceedings, pursuant to 8 U.S.C. § 1229a, against Petitioner, and
15 those proceedings remain ongoing. Within her removal proceedings under § 1229a,
16 Petitioner has the opportunity to apply for relief from removal before an immigration
17 judge (IJ), including asylum under 8 U.S.C. § 1158, withholding of removal under 8
18 U.S.C. § 1231(b)(3), and relief under the Convention Against Torture.

19 The Notice to Appear scheduled Petitioner's initial master calendar hearing for
20 July 21, 2025. *See* Exhibit C. Petitioner's removal proceedings remain pending, and his
21 individual merits hearing is scheduled for February 24, 2026. *See* ECF No. 1 at 5. As a
22 result, there is no administratively final order of removal at this time. Petitioner remains
23 mandatorily detained under 8 U.S.C. § 1225(b)(1)(B).

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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.

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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).

IV. ARGUMENT

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.”

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

10 As explained by another district court, removal proceedings are commenced
11 when, as occurred here, “the alien is issued a Notice to Appear before an immigration
12 court.” *Herrera-Correra v. United States*, No. CV 08–2941 DSF (JCx), 2008 WL
13 11336833, at *3 (C.D. Cal. Sept. 11, 2008); *see also* Exhibit C. The government “may
14 arrest the alien against whom proceedings are commenced and detain that individual
15 until the conclusion of those proceedings.” *Herrera-Correra*, 2008 WL 11336833, at
16 *3. “Thus, an alien’s detention throughout this process arises from the [government’s]
17 decision to commence proceedings” and review of claims arising from such detention
18 is barred under section 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th
19 Cir. 2007)); *see also Wang*, 2010 WL 11463156, at *6.

20 Because this habeas petition brings a claim “arising from the decision or action
21 by the [government] to commence proceedings,” review of Petitioner’s claim is barred
22 under 8 U.S.C § 1252(g). Thus, the Court must dismiss the petition.
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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 **B. Petitioner is Lawfully Detained Under the INA and the Constitution.**

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

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

6 Petitioner’s claim fails because he is subject to mandatory detention under 8
7 U.S.C. § 1225(b)(1). Under 8 U.S.C. § 1225(a)(1), an “applicant for admission” is
8 defined as an “alien present in the United States who has not been admitted or who
9 arrives in the United States.” As explained above, applicants for admission “fall into
10 one of two categories, those covered by § 1225(b)(1) and those covered by §
11 1225(b)(2).” *Jennings*, 583 U.S. at 287. Section 1225(b)(1) – the provision relevant here
12 – applies because Petitioner was found in the United States without proper documents
13 authorizing his presence. And that statute mandates detention when an immigration
14 officer determines that the alien has a credible fear of persecution. *See* 8 U.S.C.
15 § 1225(b)(1)(B)(ii) (“If the officer determines at the time of the interview that [the]
16 alien has a credible fear of persecution . . . , the alien *shall be detained* for further
17 consideration of the application for asylum.”) (emphasis added); *see also Matter of M-*
18 *S*, 27 I. & N. Dec. 509, 519 (AG 2019) (“all aliens transferred from expedited to full
19 [removal] proceedings after establishing a credible fear are ineligible for bond”).

20 Petitioner requests that the Court order him released from ICE custody. But the
21 Supreme Court has rejected such contention, explaining: “Read most naturally,
22 §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until
23 certain proceedings have concluded. . . . Nothing in the statutory text imposes any limit
24 on the length of detention. And neither § 1225(b)(1) nor § 1225(b)(2) says anything
25 whatsoever about bond hearings.” *Jennings*, 583 U.S. at 297. Except for temporary
26 parole granted at the discretion of the Attorney General “for urgent humanitarian
27 reasons or significant public benefit” under 8 U.S.C. § 1182(d)(5), “there are no *other*
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1 circumstances under which aliens detained under § 1225(b) may be released.” *Id.* at 300
2 (emphasis in original).

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

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

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

25 In *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 207–09 (1953), a
26 noncitizen in exclusion proceedings filed a habeas petition claiming that his prolonged
27 detention without a hearing violated his constitutional rights. The Supreme Court
28 rejected the petition, concluding that the noncitizen’s continued detention did not

1 deprive him of any due process rights, stating: “[A]n alien on the threshold of initial
2 entry stands on a different footing: ‘Whatever the procedure authorized by Congress is,
3 it is due process as far as an alien denied entry is concerned.’” *Id.* at 212 (citation
4 omitted).

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

25 Since the Supreme Court’s decision in *Thuraissigiam*, numerous published
26 decisions have acknowledged *Thuraissigiam*’s impact on the precise Fifth Amendment
27 Due Process Clause that Petitioner might have raised in this petition: Does an alien
28 detained under 8 U.S.C. § 1225(b)(1) have a due process right to release or a bond

1 hearing after being detained for a certain period of time? The answer is no. *See*
2 *Mendoza-Linares v. Garland*, No. 21-cv-1169-BEN (AHG), 2024 WL 3316306, *2
3 (S.D. Cal. June 10, 2024) (“[T]he Court finds that Petitioner has no Fifth Amendment
4 right to a bond hearing pending his removal proceedings.”); *Zelaya-Gonzalez*, 2023 WL
5 3103811. *3 (S.D. Cal. Apr. 25, 2023) (same); *Rodriguez Figueroa v. Garland*, 535 F.
6 Supp. 3d 122, 126–27 (W.D.N.Y. 2021); *Gonzales Garcia v. Rosen*, 513 F. Supp. 3d
7 329, 336 (W.D.N.Y. 2021); *St. Charles v. Barr*, 514 F. Supp. 3d 570, 579 (W.D.N.Y.
8 2021); *Petgrave v. Aleman*, 529 F. Supp. 3d 665, 667 (S.D. Tex. 2021).

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

20 In similar cases, courts in this district have applied the test in *Lopez v. Garland*,
21 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022). *See, e.g., Sanchez-Rivera*, 2023 WL 139801,
22 at *5 (“[W]hile the *Mathews* [*v. Eldridge*, 424 U.S. 319 (1976)] factors may be well-
23 suited to determining whether due process requires a second bond hearing, they are not
24 particularly dispositive of whether prolonged mandatory detention has become
25 unreasonable in a particular case.”); *D.D. v. LaRose, et al.*, Case No. 25-cv-02581-BJC-
26 JLB, ECF No. 10 at 7 (S.D. Cal. Oct. 22, 2025) (considering a similar claim and finding
27 “the three-factor balancing test from *Lopez* . . . provides an appropriate assessment of
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1 the possible constitutional implications of Petitioner’s ongoing detention without
2 process.”).

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

7 First, Petitioner has been detained for about 11 months. Courts in this district
8 have found detention for much longer periods to be unreasonably prolonged. *See*
9 *Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS, 2024 WL 711607 at *5 (S.D. Cal. Feb.
10 21, 2024) (32 months); *Sibomana*, 2023 WL 3028093, at *4 (19 months); *Sanchez-*
11 *Rivera*, 2023 WL 139801 at *6 (three years); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768,
12 773 (S.D. Cal. 2020) (27 months); *Yagao*, 2019 WL 1429582, at *1 (42 months). The
13 length of detention “is the most important factor.” *Sanchez-Rivera*, 2023 WL 139801,
14 at *6 (citation omitted). And Petitioner’s current detention does not fall within the range
15 those courts have found to be unreasonable. Moreover, the length of Petitioner’s
16 detention, by itself, does not favor granting habeas relief. *See Sadeqi v. LaRose*, No. 25-
17 cv-2587-RSH-BJW, 2025 WL 3154520, at *3 (S.D. Cal. Nov. 12, 2025) (“The Court
18 agrees with Respondents that the length of Petitioner’s detention to date—almost 12
19 months—does not by itself, without more, establish prolonged detention in violation of
20 due process.”). Not only does the length of Petitioner’s detention fall comparatively
21 short of the length courts in this district have found to warrant habeas relief, but the
22 other *Lopez* factors do not favor habeas relief either. Second, the likely duration of
23 future detention weighs against Petitioner. Petitioner’s individual merits hearing is
24 scheduled for February 24, 2026 (*see* ECF No. 1 at 5), at which point his path to release
25 or removal should be clear. Finally, there is no indication of any delay in the removal
26 proceedings on the part of the government.

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, or an order requiring Petitioner’s release.

2 Accordingly, Petitioner is subject to mandatory detention, which does not violate
3 due process. *See Markov v. LaRose*, No. 25-CV-3811 JLS (SBC), 2026 WL 92069 (S.D.
4 Cal. Jan. 13, 2026) (“Petitioner’s length of detention, without more, does not render his
5 detention unreasonable.”); *Duran Romero v. LaRose*, No. 25-cv-3567-AGS-VET, ECF
6 No. 7 (S.D. Cal. Jan. 14, 2026); *Shahin v. Noem*, No. 25-cv-2496-AGS-KSC, ECF No.
7 12 (S.D. Cal. Dec. 23, 2025); *Cordova Cordova*, No. 25-cv-2426-BAS-DDL, ECF No.
8 9 (S.D. Cal. Nov. 14, 2025); *Mendez Ramirez*, 612 F. Supp. 3d at 221; *Gonzalez Aguilar*
9 *v. Wolf*, 448 F. Supp. 3d at 1212; *de la Rosa Espinoza*, 2020 WL 3452967, at *6-8.

10 **V. CONCLUSION**

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

13
14 Dated: February 6, 2026

Respectfully submitted,

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16 United States Attorney

17 *s/ Tom Merritt*
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19 Assistant United States Attorney
20 Attorneys for Respondents
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