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12
13 **UNITED STATES DISTRICT COURT**
14 **SOUTHERN DISTRICT OF CALIFORNIA**
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1 **II. FACTUAL AND PROCEDURAL BACKGROUND**

2 Petitioner is a native and citizen of Ethiopia, who entered the United States
3 without inspection near San Ysidro, California, on February 23, 2025. *See* Exhibit 1
4 (Form I-213).¹ He was determined to be inadmissible under 8 U.S.C.
5 § 1182(a)(7)(A)(i)(I) and taken into Immigration and Customs Enforcement (ICE)
6 custody pursuant to 8 U.S.C. § 1225(b) and was then issued a Notice to Appear (NTA).
7 *See* ECF No. 1-3. The filing of the NTA initiated removal proceedings, pursuant to 8
8 U.S.C. § 1229a, against Petitioner, and those proceedings remain ongoing. Within his
9 removal proceedings under § 1229a, Petitioner has the opportunity to apply for relief
10 from removal before an immigration judge (IJ), including asylum under 8 U.S.C.
11 § 1158, withholding of removal under 8 U.S.C. § 1231(b)(3), and relief under the
12 Convention Against Torture.

13 The Notice to Appear scheduled Petitioner’s initial master calendar hearing for
14 July 31, 2025. *See id.* Petitioner’s removal proceedings remain pending, and his
15 individual merits hearing is scheduled for April 7, 2026. *See* Exhibit 2 (Notice of
16 Hearing). As a result, there is no administratively final order of removal at this time.
17 Petitioner remains mandatorily detained under 8 U.S.C. § 1225(b)(2)(A).

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 //

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

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

26 //

27 //

28 //

1 IV. ARGUMENT

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

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

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

16 As explained by another district court, removal proceedings are commenced
17 when, as occurred here, “the alien is issued a Notice to Appear before an immigration
18 court.” *Herrera-Correra v. United States*, No. CV 08–2941 DSF (JCx), 2008 WL
19 11336833, at *3 (C.D. Cal. Sept. 11, 2008); *see also* Exhibit 3 (Notice to Appear). The
20 government “may arrest the alien against whom proceedings are commenced and detain
21 that individual until the conclusion of those proceedings.” *Herrera-Correra*, 2008 WL
22 11336833, at *3. “Thus, an alien’s detention throughout this process arises from the
23 [government’s] decision to commence proceedings” and review of claims arising from
24 such detention is barred under section 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d
25 947, 949 (9th Cir. 2007)); *see also Wang*, 2010 WL 11463156, at *6.

26
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) 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 under 1225(b)(1)
9 because “[b]inding Ninth Circuit and Supreme Court precedents are clear that Petitioner
10 lacks any rights beyond those conferred by statute, and no statute entitles Petitioner to
11 a bond hearing”).

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

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

26 In *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 207–09 (1953), a
27 noncitizen in exclusion proceedings filed a habeas petition claiming that his prolonged
28 detention without a hearing violated his constitutional rights. The Supreme Court

1 rejected the petition, concluding that the noncitizen’s continued detention did not
2 deprive him of any due process rights, stating: “[A]n alien on the threshold of initial
3 entry stands on a different footing: ‘Whatever the procedure authorized by Congress
4 is, it is due process as far as an alien denied entry is concerned.’” *Id.* at 212 (citation
5 omitted).

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

27 Since the Supreme Court’s decision in *Thuraissigiam*, numerous published
28 decisions have acknowledged *Thuraissigiam*’s impact on the precise Fifth Amendment

1 Due Process Clause that Petitioner might have raised in this petition: Does an alien
2 detained under 8 U.S.C. § 1225(b)(1) have a due process right to release or a bond
3 hearing after being detained for a certain period of time? The answer is no. *See*
4 *Mendoza-Linares v. Garland*, No. 21-cv-1169-BEN (AHG), 2024 WL 3316306, *2
5 (S.D. Cal. June 10, 2024) (“[T]he Court finds that Petitioner has no Fifth Amendment
6 right to a bond hearing pending his removal proceedings.”); *Zelaya-Gonzalez*, 2023
7 WL 3103811. *3 (S.D. Cal. Apr. 25, 2023) (same); *Rodriguez Figueroa v. Garland*,
8 535 F. Supp. 3d 122, 126–27 (W.D.N.Y. 2021); *Gonzales Garcia v. Rosen*, 513 F.
9 Supp. 3d 329, 336 (W.D.N.Y. 2021); *St. Charles v. Barr*, 514 F. Supp. 3d 570, 579
10 (W.D.N.Y. 2021); *Petgrave v. Aleman*, 529 F. Supp. 3d 665, 667 (S.D. Tex. 2021).

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

22 In similar cases, courts in this district have applied the test in *Lopez v. Garland*,
23 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022). *See, e.g., Sanchez-Rivera*, 2023 WL 139801,
24 at *5 (“[W]hile the *Mathews* [*v. Eldridge*, 424 U.S. 319 (1976)] factors may be well-
25 suited to determining whether due process requires a second bond hearing, they are not
26 particularly dispositive of whether prolonged mandatory detention has become
27 unreasonable in a particular case.”); *D.D. v. LaRose, et al.*, Case No. 25-cv-02581-BJC-
28 JLB, ECF No. 10 at 7 (S.D. Cal. Oct. 22, 2025) (considering a similar claim and finding

1 “the three-factor balancing test from *Lopez* . . . provides an appropriate assessment of
2 the possible constitutional implications of Petitioner’s ongoing detention without
3 process.”).

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

8 First, Petitioner has been detained for slightly more than 10 months. Courts in
9 this district have found detention for much longer periods to be unreasonably
10 prolonged. *See Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS, 2024 WL 711607 at
11 *5 (S.D. Cal. Feb. 21, 2024) (32 months); *Sibomana*, 2023 WL 3028093, at *4 (19
12 months); *Sanchez-Rivera*, 2023 WL 139801 at *6 (three years); *Kydyrali v. Wolf*, 499
13 F. Supp. 3d 768, 773 (S.D. Cal. 2020) (27 months); *Yagao*, 2019 WL 1429582, at *1
14 (42 months). The length of detention “is the most important factor.” *Sanchez-Rivera*,
15 2023 WL 139801, at *6 (citation omitted). And Petitioner’s current detention does not
16 fall within the range those courts have found to be unreasonable. Moreover, the length
17 of Petitioner’s detention, by itself, does not favor granting habeas relief. *See Sadeqi v.*
18 *LaRose*, No. 25-cv-2587-RSH-BJW, 2025 WL 3154520, at *3 (S.D. Cal. Nov. 12,
19 2025) (“The Court agrees with Respondents that the length of Petitioner’s detention to
20 date—almost 12 months—does not by itself, without more, establish prolonged
21 detention in violation of due process.”). Not only does the length of Petitioner’s
22 detention fall comparatively short of the length courts in this district have found to
23 warrant habeas relief, but the other *Lopez* factors do not favor habeas relief either.
24 Second, the likely duration of future detention weighs against Petitioner. Petitioner’s
25 individual merits hearing is scheduled for April 7, 2026 (*see* Exhibit 2), at which point
26 his path to release or removal should be clear. Finally, there is no indication of any
27 delay in the removal proceedings on the part of the government.

28 Balancing the above factors, the record does not support a finding that “detention

1 has become so unreasonable as to require an initial bond hearing,” *Sanchez-Rivera*,
2 2023 WL 139801, at *6, or an order requiring Petitioner’s release.

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

11 **V. CONCLUSION**

12 For the reasons stated herein, Respondent respectfully requests that the Court
13 dismiss this petition for lack of jurisdiction or deny it on the merits.

14
15 DATED: February 13, 2026

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18 Assistant United States Attorney
19 Attorney for Respondent
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