

1 ADAM GORDON
United States Attorney
2 ALLIE MALONE SUBKE
Assistant United States Attorney
Mo. Bar Number 70688
3 Office of the U.S. Attorney
880 Front Street, Room 6293
4 San Diego, CA 92101-8893
Telephone: (619) 674-9225
5 Email: Allie.Malone.Subke@usdoj.gov

6 Attorneys for Respondents

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

10 ZULFIA KUNAKBAEVA,

11 Petitioner,

12 v.

13
14 WARDEN OTAY MESA DETENTION
15 CENTER, et al.,

16 Respondents.
17

Case No.: 26-cv-00660-RSH-JLB

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

18
19 **I. INTRODUCTION**

20 Petitioner requests the Court to order her immediate release from Immigration
21 and Customs Enforcement (ICE) custody or require that she be afforded a bond
22 hearing. As an arriving alien and applicant for admission, however, Petitioner's
23 detention is mandated by 8 U.S.C. § 1225(b)(2) until the conclusion of her removal
24 proceedings. Accordingly, the Court should deny Petitioner's requests for relief.

25 **II. FACTUAL AND PROCEDURAL BACKGROUND**

26 Petitioner is a native and citizen of Russia who lived in Cuba from approximately
27 1993 until December 2024. On December 22, 2024, she applied for admission into the
28 United States from Mexico via the San Ysidro Port of Entry. See Form I-213, attached

1 as *Exhibit 1*. At that time, she did not possess valid documents to enter the United
2 States. *Id.* She was determined to be an **arriving alien** inadmissible under 8 U.S.C.
3 § 1182(a)(7)(A)(i)(I) and was taken into Immigration and Customs Enforcement
4 custody pursuant to 8 U.S.C. § 1225(b). *Id.* She was then issued a Notice to Appear,
5 which initiated removal proceedings pursuant to 8 U.S.C. § 1229a.

6 Within her removal proceedings under § 1229a, Petitioner has had the
7 opportunity to apply for relief from removal before an immigration judge, including
8 asylum under 8 U.S.C. § 1158, withholding of removal under 8 U.S.C. § 1231(b)(3),
9 and relief under the Convention Against Torture. Those proceedings were necessarily
10 prolonged due to the unique circumstances presented by Petitioner's applications,
11 which involve claims for protection from both Cuba and Russia and required testimony
12 from a substantial number of witnesses, including experts. As a result of the unique
13 circumstances, the immigration judge conducted three separate merits hearings (on
14 November 4, 2025, December 3, 2025, and January 15, 2026, respectively) to ensure a
15 thorough adjudication of Petitioner's claims. Prior to the first merits hearing (on
16 November 4, 2025), Petitioner requested (and was granted) continuances of the same
17 on three occasions (January 25, 2025, March 12, 2025, and April 24, 2025). Thus, any
18 alleged delays in the proceedings stemmed from the scope and complexity of
19 Petitioner's claims and the three continuances that *she* requested, and there is no delay
20 attributable to Respondents.

21 On January 28, 2026, an immigration judge **found Petitioner removable** and
22 denied her applications for asylum, withholding of removal under INA § 241(b)(3),
23 withholding of removal under the Convention Against Torture, and deferral of removal
24 under the Convention Against Torture. Order of the Immigration Judge (dated January
25 28, 2026), attached as *Exhibit 2*, at 1. Accordingly, **Petitioner was ordered removed**
26 to Cuba and in the alternative, Russia. *Id.* at 3. Petitioner reserved her right to appeal
27 the immigration judge's decision, and her appeal (if any) is due on February 27, 2026.

1 *Id.* at 4. As a result, there is no administratively final order of removal at this time and
2 Petitioner remains mandatorily detained under 8 U.S.C. § 1225(b)(2)(A).

3 III. STATUTORY BACKGROUND

4 Section 235 of the Immigration and Nationality Act (INA), codified at 8 U.S.C.
5 § 1225, applies to an “applicant for admission,” defined as an “alien present in the
6 United States who has not been admitted” or “who arrives in the United States.” 8
7 U.S.C. § 1225(a)(1). “[A]pplicants for admission fall into one of two categories, those
8 covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings v. Rodriguez*,
9 583 U.S. 281, 287 (2018). Section 1225(b)(1) applies to arriving aliens and “certain
10 other” aliens “initially determined to be inadmissible due to fraud, misrepresentation,
11 or lack of valid document.” *Id.* (citing 8 U.S.C. § 1225(b)(1)(A)(i)). These aliens are
12 generally subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i).
13 But if “the alien indicates an intention to apply for asylum . . . or a fear of persecution,”
14 immigration officers will refer the alien for a credible fear interview. 8 U.S.C. §
15 1225(b)(1)(A)(ii). “If the officer determines at the time of the interview that [the] alien
16 has a credible fear of persecution . . . , the alien *shall be detained* for further
17 consideration of the application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii) (emphasis
18 added). If the alien does not indicate an intent to apply for asylum, does not express a
19 fear of persecution, or is “found not to have such a fear,” they “shall be detained . . .
20 until removed” from the United States. 8 U.S.C. §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

21 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*,
22 583 U.S. at 287. It “applies to all applicants for admission not covered by §
23 1225(b)(1).” *Id.* Under § 1225(b)(2), an alien “who is an applicant for admission” shall
24 be detained for a removal proceeding “if the examining immigration officer determines
25 that [the] alien seeking admission is not clearly and beyond a doubt entitled to be
26 admitted.” 8 U.S.C. § 1225(b)(2)(A); *Matter of Q. Li*, 29 I&N Dec. 66, 68 (BIA 2025)
27 (“for aliens arriving in and seeking admission into the United States who are placed
28 directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. §

1 1225(b)(2)(A), mandates detention ‘until removal proceedings have concluded.’”)
2 (citing *Jennings*, 583 U.S. at 299). However, DHS has the sole discretionary authority
3 to temporarily release on parole “any alien applying for admission to the United States”
4 on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.”
5 *Id.* § 1182(d)(5)(A); see *Biden v. Texas*, 597 U.S. 785, 806 (2022).

6 IV. ARGUMENT

7 A. Petitioner’s Allegations Regarding Conditions of her Confinement are not 8 Proper Habeas Claims

9 To the extent Petitioner asserts claims regarding conditions of her confinement,
10 including complaints regarding “substandard” and “inadequate medical care,”¹ the
11 Court lacks jurisdiction over such claims because they do not challenge the lawfulness
12 of her custody. An individual may seek habeas relief under 28 U.S.C. § 2241 if she is
13 “in custody” under federal authority “in violation of the Constitution or laws or treaties
14 of the United States.” 28 U.S.C. § 2241(c). But habeas relief is only available to
15 challenge the legality or duration of confinement. *Pinson v. Carvajal*, 69 F.4th 1059,
16 1067 (9th Cir. 2023); *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979); *Dep’t of*
17 *Homeland Security v. Thraissigiam*, 591 U.S. 103, 117 (2020) (The writ of habeas
18 corpus historically “provide[s] a means of contesting the lawfulness of restraint and
19 securing release.”). The Ninth Circuit squarely explained how to decide whether a claim
20 sounds in habeas jurisdiction: “[O]ur review of the history and purpose of habeas leads
21 us to conclude the relevant question is whether, based on the allegations in the petition,
22 release is *legally required* irrespective of the relief requested.” *Pinson*, 69 F.4th at 1072
23 (emphasis in original); see also *Nettles v. Grounds*, 830 F.3d 922, 934 (9th Cir. 2016)
24 (The key inquiry is whether success on the petitioner’s claim would “necessarily lead
25 to immediate or speedier release.”).

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¹ See ECF No. 1, at 7

1 Here, Petitioner’s claims regarding the conditions of her confinement, including
2 complaints regarding “substandard” and “inadequate medical care,”² do not arise under
3 § 2241. *See Nettles*, 830 F.3d at 933 (“We have long held that prisoners may not
4 challenge mere conditions of confinement in habeas corpus.”); *Giron Rodas v. Lyons*,
5 No. 25cv1912-LL-AHG, 2025 WL 2300781, at *3 (S.D. Cal. Aug. 1, 2025) (“Like in
6 *Pinson*, the Court lacks jurisdiction over Petitioner’s § 2241 habeas petition since it
7 cannot be fairly read as attacking ‘the legality or duration of confinement.’”) (quoting
8 *Pinson*, 69 F.4th at 1065); *Guselnikov v. Noem*, No. 25-cv-1971-BTM-KSC, 2025 WL
9 2300873, at *1 (S.D. Cal. Aug. 8, 2025) (finding petitioners’ claims did not arise under
10 § 2241 because they were not arguing they were unlawfully in custody and receiving
11 the requested relief would not entitle them to release). Thus, Petitioner’s claims
12 regarding “substandard” and “inadequate medical care”³ do not arise under § 2241 and
13 the Court does not have jurisdiction over those claims.

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

15 Judicial review over Petitioner’s claim is barred by 28 U.S.C. § 1252(g), which
16 states that “[n]o court shall have jurisdiction to hear any cause or claim by or on behalf
17 of any alien arising from the decision or action by the Attorney General to commence
18 proceedings, adjudicate cases, or execute removal orders.” Petitioner’s claim regarding
19 her detention necessarily arises from the Department of Homeland Security’s⁴ decision
20 to commence removal proceedings against her because that decision unavoidably
21 triggers mandatory detention under 8 U.S.C. § 1225(b)(1)(B)(ii) until the conclusion of
22 her removal proceedings. *See, e.g., Wang v. United States*, No. CV 10-0389 SVW
23 (RCx), 2010 WL 11463156, at *6 (C.D. Cal. Aug. 18, 2010) (finding section 1252(g)

24 _____
25 ² *See* ECF No. 1, at 7

26 ³ *See* ECF No. 1, at 7

27 ⁴ “In 2002, Congress transferred the Attorney General’s immigration enforcement
responsibilities to the Secretary of Homeland Security.” *Ibarra-Perez v. United States*,
28 154 F.4th 989, 995 n.2 (9th Cir. 2025).

1 bars judicial review of false imprisonment claim because the plaintiff’s detention arose
2 from the decision to commence removal proceedings, and in turn, the “statute
3 mandating detention during removal proceedings of a person charged as an ‘arriving
4 alien.’”).

5 As explained by another district court, removal proceedings are commenced
6 when, as occurred here, “the alien is issued a Notice to Appear before an immigration
7 court.” *Herrera-Correra v. United States*, No. CV 08–2941 DSF (JCx), 2008 WL
8 11336833, at *3 (C.D. Cal. Sept. 11, 2008). The government “may arrest the alien
9 against whom proceedings are commenced and detain that individual until the
10 conclusion of those proceedings.” *Herrera-Correra*, 2008 WL 11336833, at *3. “Thus,
11 an alien’s detention throughout this process arises from the [government’s] decision to
12 commence proceedings” and review of claims arising from such detention is barred
13 under section 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007));
14 *see also Wang*, 2010 WL 11463156, at *6.

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

18 **C. Petitioner is Lawfully Detained Under the INA and the Constitution**

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

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

23 Petitioner is an arriving alien. Arriving aliens are applicants for admission who
24 are subject to expedited removal proceedings, *see* 28 U.S.C. § 1225(b)(1)(A)(i),
25 unless—as occurred here—an asylum officer has determined that they have a credible
26 fear of persecution, *see* 28 U.S.C. § 1225(b)(1)(B)(ii). In such cases, the INA mandates
27 that “the alien *shall be detained* for further consideration of the application for asylum.”
28 U.S.C. § 1225(b)(1)(B)(ii) (emphasis added); *see also Matter of M-S*, 27 I. & N. Dec.

1 509, 519 (AG 2019) (“all aliens transferred from expedited to full [removal]
2 proceedings after establishing a credible fear are ineligible for bond”). Because
3 Petitioner is an arriving alien found to have a credible fear of persecution and placed in
4 full removal proceedings, her detention is mandated by section 1225(b) until the
5 conclusion of her removal proceedings. *See Jennings*, 583 U.S. at 302 (“§§ 1225(b)(1)
6 and (b)(2) mandate detention of aliens throughout the completion of applicable
7 proceedings”).

8 Petitioner requests that the Court order her 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 she has not been granted
19 temporary parole, section 1225(b)(1)(B) mandates her 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 her to release at this time, her
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 § 1225(b). The Supreme Court stated that, “[r]ead most naturally, [8 U.S.C.]

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

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

20 In *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 138–40
21 (2020), the Supreme Court once again addressed the due process rights of individuals
22 like Petitioner—inadmissible arriving noncitizens seeking initial entry into the United
23 States. The Supreme Court stated that such individuals have no due process rights
24 “other than those afforded by statute.” *Id.* at 107; *see also id.* at 140 (“[A]n alien in
25 respondent’s position has only those rights regarding admission that Congress has
26 provided by statute.”). The Supreme Court noted that its determination was supported
27 by “more than a century of precedent.” *Id.* at 138 (citing *Nishimura Ekiu v. United*
28 *States*, 142 U.S. 651, 660 (1892); *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537,

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

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

25 In similar cases, courts in this district have applied the test in *Lopez v. Garland*,
26 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022). *See, e.g., Sanchez-Rivera*, 2023 WL
27 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

1 are not particularly dispositive of whether prolonged mandatory detention has become
2 unreasonable in a particular case.”); *D.D. v. LaRose, et al.*, Case No. 25-cv-02581-
3 BJC-JLB, ECF No. 10 at 7 (S.D. Cal. Oct. 22, 2025) (considering a similar claim and
4 finding “the three-factor balancing test from *Lopez* . . . provides an appropriate
5 assessment of the possible constitutional implications of Petitioner’s ongoing detention
6 without process.”). Under *Lopez*, to determine whether continued mandatory detention
7 has become unreasonable, “the Court will look to the total length of detention to date,
8 the likely duration of future detention, and the delays in the removal proceedings
9 caused by the petitioner and the government.” 631 F. Supp. 3d at 879.

10 First, Petitioner has been detained for about 14 months. Courts in this district
11 have found detention for much longer periods to be unreasonably prolonged. *See*
12 *Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS, 2024 WL 711607 at *5 (S.D. Cal.
13 Feb. 21, 2024) (32 months); *Sibomana*, 2023 WL 3028093, at *4 (19 months);
14 *Sanchez-Rivera*, 2023 WL 139801 at *6 (three years); *Kydyrali v. Wolf*, 499 F. Supp.
15 3d 768, 773 (S.D. Cal. 2020) (27 months); *Yagao*, 2019 WL 1429582, at *1 (42
16 months). The length of detention “is the most important factor.” *Sanchez-Rivera*, 2023
17 WL 139801, at *6 (citation omitted). And Petitioner’s current detention does not fall
18 within the range those courts have found to be unreasonable.

19 Second, the likely duration of future detention weighs against Petitioner because
20 her individual merits hearings have already taken place. And third, the government has
21 not caused any delay in the removal proceedings. Rather, the proceedings were
22 necessarily prolonged due to the complexity of Petitioner’s case and the fact that she
23 requested at least three continuances of her merits hearing. Balancing the above factors,
24 the record does not support a finding that “detention has become so unreasonable as to
25 require an initial bond hearing,” *Sanchez-Rivera*, 2023 WL 139801, at *6, or an order
26 requiring Petitioner’s release.

27 Accordingly, Petitioner is subject to mandatory detention, which does not violate
^° due process. *See Markov v. LaRose*, No. 25-CV-3811 JLS (SBC), 2026 WL 92069 (S.D.

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

7 **V. CONCLUSION**

8 For the reasons discussed above, Respondents respectfully request that the Court
9 dismiss this petition for lack of jurisdiction or alternatively, deny it on the merits.

10
11 Dated: February 13, 2026

Respectfully submitted,

12 ADAM GORDON
13 United States Attorney

14 s/ Allie Malone Subke
15 ALLIE MALONE SUBKE
16 Assistant United States Attorney
17 Attorneys for Respondents
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