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

10
11 GERMAKHANOV,

12 Petitioner,

13
14 v.

15 WARDEN OF IMPERIAL REGIONAL
16 DETENTION FACILITY,

17 Respondents.
18

Case No.: 26-cv-1397 BJC

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

Judge: Hon. Benjamin J. Cheeks

19
20 **I. FACTUAL AND PROCEDURAL BACKGROUND**

21 Petitioner is a native and citizen of Russia, who jumped the border fence to enter
22 the United States without inspection near Calexico, California, on June 30, 2025. *See*
23 Exhibit 1 (Form I-213).¹ Petitioner did not then have any valid entry documents to enter
24 the United States. He was determined to be inadmissible under 8 U.S.C.
25 § 1182(a)(7)(A)(i)(I), placed in expedited removal proceedings pursuant to 8 U.S.C. §
26

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

1 1225(b)(1), and taken into Immigration and Customs Enforcement (ICE) custody
2 pursuant to 8 U.S.C. § 1225(b)(1)(B). As noted in the Petition, Petitioner’s asylum
3 application was denied, he has been ordered removed but chose to appeal to the BIA.
4 In addition, he is facing criminal prosecution under 8 USC § 1325 for illegally entering
5 the United States. *See* Ex. 2, RAP sheet excerpt. Petitioner remains mandatorily
6 detained under 8 U.S.C. § 1225(b)(1)(B).

7 **II. STATUTORY BACKGROUND**

8 Section 235 of the Immigration and Nationality Act (INA), codified at 8 U.S.C.
9 § 1225, applies to an “applicant for admission,” defined as an “alien present in the
10 United States who has not been admitted” or “who arrives in the United States.” 8
11 U.S.C. § 1225(a)(1). “[A]pplicants for admission fall into one of two categories, those
12 covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings v. Rodriguez*,
13 583 U.S. 281, 287 (2018).

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

1 **III. ARGUMENT**

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

3 Respondents contend 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)(1)(B)(ii) until the conclusion of his removal proceedings. *See, e.g.,*
11 *Wang v. United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at *6 (C.D.
12 Cal. Aug. 18, 2010) (finding section 1252(g) bars judicial review of false imprisonment
13 claim 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 has not been
7 unconstitutionally prolonged.

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

9 Petitioner’s claim fails because he is subject to mandatory detention under 8
10 U.S.C. § 1225(b)(1). 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. Section 1225(b)(1) – the provision relevant
15 here – applies because Petitioner was found in the United States without proper
16 documents authorizing his presence. And that statute mandates detention when an
17 immigration officer determines that the alien has a credible fear of persecution. *See* 8
18 U.S.C. § 1225(b)(1)(B)(ii) (“If the officer determines at the time of the interview that
19 [the] alien has a credible fear of persecution . . . , the alien *shall be detained* for further
20 consideration of the application for asylum.”) (emphasis added); *see also Matter of M-*
21 *S*, 27 I. & N. Dec. 509, 519 (AG 2019) (“all aliens transferred from expedited to full
22 [removal] proceedings after establishing a credible fear are ineligible for bond”).

23 Petitioner requests that the Court order him released from ICE custody. But the
24 Supreme Court has rejected such contention, explaining: “Read most naturally,
25 §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until
26 certain proceedings have concluded. . . . Nothing in the statutory text imposes any limit
27 on the length of detention. And neither § 1225(b)(1) nor § 1225(b)(2) says anything
28 whatsoever about bond hearings.” *Jennings*, 583 U.S. at 297. Except for temporary

1 parole granted at the discretion of the Attorney General “for urgent humanitarian
2 reasons or significant public benefit” under 8 U.S.C. § 1182(d)(5), “there are no *other*
3 circumstances under which aliens detained under § 1225(b) may be released.” *Id.* at 300
4 (emphasis in original).

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

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

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

27 In *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 207–09 (1953), a
28 noncitizen in exclusion proceedings filed a habeas petition claiming that his prolonged

1 detention without a hearing violated his constitutional rights. The Supreme Court
2 rejected the petition, concluding that the noncitizen’s continued detention did not
3 deprive him of any due process rights, stating: “[A]n alien on the threshold of initial
4 entry stands on a different footing: ‘Whatever the procedure authorized by Congress
5 is, it is due process as far as an alien denied entry is concerned.’” *Id.* at 212 (citation
6 omitted).

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

28

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

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

24 In similar cases, courts in this district have applied the test in *Lopez v. Garland*,
25 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022). *See, e.g., Sanchez-Rivera*, 2023 WL 139801,
26 at *5 (“[W]hile the *Mathews* [*v. Eldridge*, 424 U.S. 319 (1976)] factors may be well-
27 suited to determining whether due process requires a second bond hearing, they are not
28 particularly dispositive of whether prolonged mandatory detention has become

1 unreasonable in a particular case.”); *D.D. v. LaRose, et al.*, Case No. 25-cv-02581-BJC-
2 JLB, ECF No. 10 at 7 (S.D. Cal. Oct. 22, 2025) (considering a similar claim and finding
3 “the three-factor balancing test from *Lopez* . . . provides an appropriate assessment of
4 the possible constitutional implications of Petitioner’s ongoing detention without
5 process.”).

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

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

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

14
15 Dated: March 13, 2026

Respectfully submitted,

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