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

10
11 SVETLANA GRIGOROVICH,
12
13 Petitioner,

14 v.

15 CHRISTOPHER J. LAROSE, et al,
16
17 Respondents.

Case No.: 26-cv-1572-BAS-MSB

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

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1 **I. INTRODUCTION**

2 Petitioner requests the Court to order her immediate release from Immigration
3 and Customs Enforcement (ICE) custody or require that she be afforded a bond
4 hearing. She grounds her claims in the due process clause. But as an arriving alien and
5 applicant for admission Petitioner’s detention is mandated by 8 U.S.C. § 1225(b)(2)
6 until the conclusion of her removal proceedings. The U.S. Constitution does not
7 preclude her detention while proceedings are ongoing. Accordingly, the Court should
8 deny Petitioner’s requests for relief.

9 **II. FACTUAL AND PROCEDURAL BACKGROUND**

10 The United States does not dispute the facts as set forth in the petition. Petitioner
11 is a native and citizen of Russia. ECF No. 1 at 1,3. On May 7, 2025, she applied for
12 admission to the United States at a port of entry. *See id.* at 1. She did not possess legal
13 documentation to be in or enter the United States. *Id.* at 3. She was determined to be an
14 arriving alien inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I), placed into expedited
15 removal proceedings under 8 U.S.C. § 1225(b)(1), and taken into Immigration and
16 Customs Enforcement (ICE) custody pursuant to 8 U.S.C. § 1225(b)(1)(B).

17 Within her removal proceedings under 8 U.S.C. § 1229a, Petitioner has the
18 opportunity to apply for relief from removal before an immigration judge (IJ), including
19 asylum under 8 U.S.C. § 1158, withholding of removal under 8 U.S.C. § 1231(b)(3),
20 and relief under the Convention Against Torture. On January 26, 2026, the Immigration
21 Judge (IJ) denied Petitioner’s application for relief and ordered her removed. *Id.* at 4.
22 On February 7, 2026, Petitioner appealed the IJ’s order to the Board of Immigration
23 Appeals. *Id.* That appeal remains pending.

24 Because Petitioner is an alien who is an applicant for admission, she remains
25 mandatorily detained under 8 U.S.C. § 1225(b)(2)(A).

26 **III. STATUTORY BACKGROUND**

27 Section 235 of the Immigration and Nationality Act (INA), codified at 8 U.S.C.
28 § 1225, applies to an “applicant for admission,” defined as an “alien present in the

1 United States who has not been admitted” or “who arrives in the United States.” 8
2 U.S.C. § 1225(a)(1). “[A]pplicants for admission fall into one of two categories, those
3 covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings v. Rodriguez*,
4 583 U.S. 281, 287 (2018).

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

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

3 IV. ARGUMENT

4 Petitioner’s habeas petition should be denied because 28 U.S.C. § 1252(g) bars
5 judicial review over her claim, and because she is lawfully detained under the INA and
6 the Constitution.

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

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

12 Here, Petitioner’s claims of unlawful detention necessarily arise from the
13 Department of Homeland Security’s¹ decision to commence removal proceedings
14 against him because that decision unavoidably triggers mandatory detention under 8
15 U.S.C. § 1225(b)(1)(B)(ii) until the conclusion of his removal proceedings. *See, e.g.,*
16 *Wang v. United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at *6 (C.D.
17 Cal. Aug. 18, 2010) (finding section 1252(g) bars judicial review of false imprisonment
18 claim because the plaintiff’s detention arose from the decision to commence removal
19 proceedings, and in turn, the “statute mandating detention during removal proceedings
20 of a person charged as an ‘arriving alien.’”).

21 As explained by another district court, removal proceedings are commenced
22 when, as occurred here, “the alien is issued a Notice to Appear before an immigration
23 court.” *Herrera-Correra v. United States*, No. CV 08–2941 DSF (JCx), 2008 WL
24 11336833, at *3 (C.D. Cal. Sept. 11, 2008); *see also* Exhibit 1 (Notice to Appear). The
25 government “may arrest the alien against whom proceedings are commenced and detain
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27 ¹ “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 that individual until the conclusion of those proceedings.” *Herrera-Correra*, 2008 WL
2 11336833, at *3. “Thus, an alien’s detention throughout this process arises from the
3 [government’s] decision to commence proceedings” and review of claims arising from
4 such detention is barred under section 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d
5 947, 949 (9th Cir. 2007)); *see also Wang*, 2010 WL 11463156, at *6.

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

9 **B. Petitioner is Lawfully Detained Under the INA and the Constitution.**

10 Even if the Court assumed jurisdiction to review Petitioner’s claim, the Court
11 must deny his habeas petition because Petitioner’s detention is statutorily mandated
12 under 8 U.S.C. § 1225(b)(2)(A).

13 **1. Petitioner is mandatorily detained under 8 U.S.C. § 1225(b)(2).**

14 Petitioner’s claim fails because she is subject to mandatory detention under 8
15 U.S.C. § 1225(b)(2). Under 8 U.S.C. § 1225(a)(1), an “applicant for admission” is
16 defined as an “alien present in the United States who has not been admitted or who
17 arrives in the United States.” As explained above, applicants for admission “fall into
18 one of two categories, those covered by § 1225(b)(1) and those covered by §
19 1225(b)(2).” *Jennings*, 583 U.S. at 287.

20 Section 1225(b)(2)(A) requires mandatory detention of “an alien who is *an*
21 *applicant for admission*, if the examining immigration officer determines that an alien
22 seeking admission is not clearly and beyond a doubt entitled to be admitted[.]” *Chavez*
23 *v. Noem*, No. 3:25-cv-02325, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24, 2025)
24 (quoting 8 U.S.C. § 1225(b)(2)(A)) (emphasis in original). Petitioner contends that she
25 is entitled to a bond hearing. But the Supreme Court has rejected such contention,
26 explaining: “Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of
27 applicants for admission until certain proceedings have concluded. . . . Nothing in the
28 statutory text imposes any limit on the length of detention. And neither § 1225(b)(1)

1 nor § 1225(b)(2) says anything whatsoever about bond hearings.” *Jennings*, 583 U.S. at
2 297. Except for temporary parole granted at the discretion of the Attorney General “for
3 urgent humanitarian reasons or significant public benefit” under 8 U.S.C. § 1182(d)(5),
4 “there are no *other* circumstances under which aliens detained under § 1225(b) may be
5 released.” *Id.* at 300 (emphasis in original).

6 As Petitioner’s removal proceedings are pending, and she has not been granted
7 temporary parole, section 1225(b)(2) mandates her detention until the proceedings have
8 concluded. *Jennings*, 583 U.S. at 297 (“Once those proceedings end, detention under
9 § 1225(b) must end as well.”). Because Petitioner is lawfully detained under
10 section 1225(b) and the statute does not entitle her to a bond hearing at this time, her
11 petition must be denied. *See, e.g., Zelaya-Gonzalez v. Matuszewski*, No. 23-CV-151
12 JLS-KSC, 2023 WL 3103811, at *3 (S.D. Cal. April 25, 2023) (applying *Jennings* to
13 find that the petitioner had no right to release or a bond hearing under 1225(b)(1)
14 because “[b]inding Ninth Circuit and Supreme Court precedents are clear that Petitioner
15 lacks any rights beyond those conferred by statute, and no statute entitles Petitioner to
16 a bond hearing”).

17 **2. Petitioner’s detention does not violate due process.**

18 Petitioner also argues that her mandatory detention under the INA violates the
19 due process clause of the Fifth Amendment to the U.S. Constitution. The Court should
20 reject this argument.

21 In *Jennings*, the Supreme Court evaluated the proper interpretation of 8 U.S.C.
22 § 1225(b). The Supreme Court stated that, “[r]ead most naturally, [8 U.S.C.]
23 §§ 1225(b)(1) and (b)(2) . . . mandate detention of applicants for admission until certain
24 proceedings have concluded.” *Id.* at 297. In other words, neither 8 U.S.C. § 1225(b)(1)
25 nor § 1225(b)(2) “impose[] any limit on the length of detention” and “neither
26 § 1225(b)(1) nor § 1225(b)(2) say[] anything whatsoever about bond hearings.” *Id.* The
27 Supreme Court added that the sole means of release for noncitizens detained pursuant
28 to 8 U.S.C. §§ 1225(b)(1) or (b)(2) prior to removal from the United States is temporary

1 parole at the discretion of the Attorney General under 8 U.S.C. § 1182(d)(5). *Id.* at 300
2 (“That express exception to detention implies that there are no *other* circumstances
3 under which aliens detained under [8 U.S.C.] § 1225(b) may be released.”) (emphasis
4 in original). “In sum, [8 U.S.C.] §§ 1225(b)(1) and (b)(2) mandate detention of aliens
5 throughout the completion of applicable proceedings[.]” *Id.* at 302.

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

14 In *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 138–40
15 (2020), the Supreme Court once again addressed the due process rights of individuals
16 like Petitioner—inadmissible arriving noncitizens seeking initial entry into the United
17 States. The Supreme Court stated that such individuals have no due process rights
18 “other than those afforded by statute.” *Id.* at 107; *see also id.* at 140 (“[A]n alien in
19 respondent’s position has only those rights regarding admission that Congress has
20 provided by statute.”). The Supreme Court noted that its determination was supported
21 by “more than a century of precedent.” *Id.* at 138 (citing *Nishimura Ekiu v. United*
22 *States*, 142 U.S. 651, 660 (1892); *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537,
23 544 (1950); *Mezei*, 345 U.S. at 212; *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)).
24 Because the only process due Petitioner is that afforded under section 1225(b), the
25 Court must reject her claim that her detention violates the Fifth Amendment’s Due
26 Process Clause and deny her requested relief. *See Thuraissigiam*, 591 U.S. at 138–40;
27 *Mendoza-Linares*, 51 F.4th at 1167; *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206
28 (9th Cir. 2022) (“The recognized liberty interests of U.S. citizens and aliens are not

1 coextensive: the Supreme Court has ‘firmly and repeatedly endorsed the proposition
2 that Congress may make rules as to aliens that would be unacceptable if applied to
3 citizens.’”) (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)); *Zelaya-Gonzalez*,
4 2023 WL 3103811, at *4 (“Binding Ninth Circuit and Supreme Court precedents are
5 clear that Petitioner lacks any rights beyond those conferred by statute, and no statute
6 entitles Petitioner to a bond hearing.”).

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

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

1 likely duration of future detention, and the delays in the removal proceedings caused by
2 the petitioner and the government.” 631 F. Supp. 3d at 879.

3 Petitioner has been detained for approximately 16 months. Courts in this district
4 have found detention for much longer periods to be unreasonably prolonged. *See*
5 *Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS, 2024 WL 711607 at *5 (S.D. Cal.
6 Feb. 21, 2024) (32 months); *Sibomana*, 2023 WL 3028093, at *4 (19 months);
7 *Sanchez-Rivera*, 2023 WL 139801 at *6 (three years); *Kydyrali v. Wolf*, 499 F. Supp.
8 3d 768, 773 (S.D. Cal. 2020) (27 months); *Yagao*, 2019 WL 1429582, at *1 (42
9 months). The length of detention “is the most important factor.” *Sanchez-Rivera*, 2023
10 WL 139801, at *6 (citation omitted). And Petitioner’s current detention does not fall
11 within the range those courts have found to be unreasonable. Moreover, the length of
12 Petitioner’s detention, by itself, does not favor granting habeas relief. *See Sadeqi v.*
13 *LaRose*, No. 25-cv-2587-RSH-BJW, 2025 WL 3154520, at *3 (S.D. Cal. Nov. 12,
14 2025) (“The Court agrees with Respondents that the length of Petitioner’s detention to
15 date—almost 12 months—does not by itself, without more, establish prolonged
16 detention in violation of due process.”). Not only does the length of Petitioner’s
17 detention fall comparatively short of the length courts in this district have found to
18 warrant habeas relief, but the other *Lopez* factors do not favor habeas relief either.

19 Petitioner relies on *Zadvydas*, 533 U.S. at 690, to assert that the Due Process
20 Clause imposes a limit on the amount of time an individual can be held without bond
21 during removal proceedings. Dk. 1 at 8, ¶ 29. *Zadvydas* did not concern detention while
22 removal proceedings were ongoing. To the contrary, it concerned aliens who had been
23 ordered removed but could not be removed in the “reasonably foreseeable” future.
24 *Zadvydas*, 533 U.S. at 685. *Zadvydas* recognized that once an alien has been ordered
25 removed, he or she cannot be detained indefinitely where removal is not “reasonably
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1 foreseeable.” 533 U.S. at 685. *Zadvydas* did not imply a constitutional right to release
2 while removal proceedings are ongoing.²

3 As this Court recently recognized, “*Zadvydas* due process analysis does not begin
4 until the close of the statutory 90-day removal period.” *Rios v. U.S. Department of*
5 *Homeland Security*, 2025 WL 3022854, at *3 (S.D. Cal. Oct. 29, 2025) (citing
6 *Zadvydas*, 533 U.S. at 682); *see also Jennings v. Rodriguez*, 583 U.S. 281, 308–09
7 (2018) (“*Zadvydas* concerned § 1231(a)(6), which authorizes the detention of aliens
8 who have already been ordered removed from the country.”). *Zadvydas* does not apply
9 to aliens, such as Petitioner, whose proceedings are ongoing.

10 Petitioner was detained when she applied for admission to the United States. She
11 is thus an applicant for admission, and her mandatory detention does not violate due
12 process. *See Shahin v. Noem*, No. 25-cv-2496-AGS-KSC, ECF No. 12 (S.D. Cal. Dec.
13 23, 2025).

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² *Zadvydas* specifically concerned two individuals who were subject to final orders of removal where there were implications of the impossibility of repatriation. *Zadvydas* was stateless and both countries to which he potentially could have been deported (the country where he was born and the country of which his parents were citizens) refused to accept him because he was not a citizen. *See Zadvydas*, 533 U.S. at 684. The deportation of the other petitioner in *Zadvydas*, Ma, was prevented because there was no repatriation agreement at that time between the United States and Cambodia. *Id.* at 685.

V. CONCLUSION

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

Dated: March 19, 2026

Respectfully submitted,

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