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

11 Rudolf Islamov,

12
13 Petitioner,

14 v.

15 John Doe, et al,

16
17 Respondents.
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Case No. 26-cv-01528-JES-VET

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

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22 **I. INTRODUCTION**

23 Petitioner requests the Court to order his immediate release from Immigration
24 and Customs Enforcement (ICE) custody or require that he be afforded a bond hearing.
25 As an arriving alien found to have a credible fear of persecution, however, Petitioner's
26 detention is mandated by 8 U.S.C. § 1225(b)(1)(B)(ii) until the conclusion of his
27 removal proceedings. As Petitioner is subject to mandatory detention under 8 U.S.C. §
28 1225(b)(1)(B)(ii), the Court should deny Petitioner's requests for relief.

1 **II. FACTUAL AND PROCEDURAL BACKGROUND**

2 Petitioner is a native and citizen of Russia. *See* Exhibit 1 (Notice to Appear). On
3 October 25, 2025, he applied for admission to the United States at a port of entry. *See*
4 *id.* He did not then possess legal documentation to be in or enter the United States. *See*
5 *id.* He was determined to be an arriving alien inadmissible under 8 U.S.C.
6 § 1182(a)(7)(A)(i)(I), placed into expedited removal proceedings under 8 U.S.C.
7 § 1225(b)(1), and taken into Immigration and Customs Enforcement (ICE) custody
8 pursuant to 8 U.S.C. § 1225(b)(1)(B). *See id* at 4; *see also* Exhibit 2 (I-213). He was
9 then interviewed by an asylum officer, pursuant to 8 U.S.C. § 1225(b)(1)(B). *See*
10 Exhibit 3 (Credible Fear Interview). Petitioner received a negative credible fear
11 determination, which was vacated by an Immigration Judge. *See id*; *see also* Exhibit 4
12 (Order of the Immigration Judge). Petitioner was then issued a Notice to Appear (NTA).
13 *See* Exhibit 1. The filing of the NTA initiated removal proceedings, pursuant to 8 U.S.C.
14 § 1229a, against Petitioner, and those proceedings remain ongoing. Within his removal
15 proceedings under § 1229a, Petitioner has the opportunity to apply for relief from
16 removal before an immigration judge (IJ), including asylum under 8 U.S.C. § 1158,
17 withholding of removal under 8 U.S.C. § 1231(b)(3), and relief under the Convention
18 Against Torture.

19 Petitioner filed his relief application with the immigration court on December 30,
20 2025, and his next master calendar hearing is scheduled for April 2, 2026. *See* Exhibit
21 5 (Notice of Hearing); *see also* Exhibit 6 at 3 (PCQS Printout). Because Petitioner’s
22 removal proceedings remain pending, there is no administratively final order of removal
23 at this time. Petitioner remains mandatorily detained under 8 U.S.C. § 1225(b)(1)(B)(ii).

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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’s¹ 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 1 (Notice to Appear). The
14 government “may arrest the alien against whom proceedings are commenced and detain
15 that individual until the conclusion of those proceedings.” *Herrera-Correra*, 2008 WL
16 11336833, at *3. “Thus, an alien’s detention throughout this process arises from the
17 [government’s] decision to commence proceedings” and review of claims arising from
18 such detention is barred under section 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d
19 947, 949 (9th 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 petition².

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25 ¹ “In 2002, Congress transferred the Attorney General’s immigration enforcement
26 responsibilities to the Secretary of Homeland Security.” *Ibarra-Perez v. United States*,
27 154 F.4th 989, 995 n.2 (9th Cir. 2025).

28 ² Petitioner has also failed to name his immediate custodian and the petition should be
dismissed for lack of jurisdiction on that basis as well. *See* 28 U.S.C. § 2243 (“The
writ, or order to show cause shall be directed to the person having custody of the
person detained.”); *see also Doe v. Garland*, 109 F. 4th 1188, 1197 (9th Cir. 2024)

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 is an arriving alien. *See* Exhibit 1; *see also* Exhibit 2 (showing that
7 Petitioner “applied for admission” at a “port of entry”). As discussed above, arriving
8 aliens are applicants for admission who are subject to expedited removal proceedings,
9 *see* 28 U.S.C. § 1225(b)(1)(A)(i), unless an asylum officer has determined that they
10 have a credible fear of persecution, *see* 28 U.S.C. § 1225(b)(1)(B)(ii). In such cases,
11 the INA mandates that “the alien *shall be detained* for further consideration of the
12 application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii) (emphasis added); *see also*
13 *Matter of M-S*, 27 I. & N. Dec. 509, 519 (AG 2019) (“all aliens transferred from
14 expedited to full [removal] proceedings after establishing a credible fear are ineligible
15 for bond”). Because Petitioner is an arriving alien found to have a credible fear of
16 persecution and placed in full removal proceedings, his detention is mandated by
17 section 1225(b) until the conclusion of his removal proceedings. *See Jennings*, 583
18 U.S. at 302 (“§§ 1225(b)(1) and (b)(2) mandate detention of aliens throughout the
19 completion of applicable proceedings”).

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, §§

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24 (citing *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004)). ([C]ore habeas petitioners
25 challenging their present physical confinement [must] name their immediate
26 custodian, the warden of the facility where they are detained, as the respondent to their
27 petition.); *see also Mukhamadiev v. U.S. Dep’t of Homeland Security*, No. 25-cv-
28 1017-DMS-MSB, 2025 WL 1208913, at *3 (S.D. Cal. Apr. 25, 2025)([T]he Court
cannot exercise jurisdiction over [Petitioner’s] Petition so long as [s]he fails to name
as respondent the warden of the detention facility where [s]he is being detained.)

1 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain
2 proceedings have concluded. . . . Nothing in the statutory text imposes any limit on the
3 length of detention. And neither § 1225(b)(1) nor § 1225(b)(2) says anything
4 whatsoever about bond hearings.” *Jennings*, 583 U.S. at 297. Except for temporary
5 parole granted at the discretion of the Attorney General “for urgent humanitarian
6 reasons or significant public benefit” under 8 U.S.C. § 1182(d)(5), “there are no *other*
7 circumstances under which aliens detained under § 1225(b) may be released.” *Id.* at 300
8 (emphasis in original).

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

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

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

1 in original). “In sum, [8 U.S.C.] §§ 1225(b)(1) and (b)(2) mandate detention of aliens
2 throughout the completion of applicable proceedings[.]” *Id.* at 302.

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

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

1 2023 WL 3103811, at *4 (“Binding Ninth Circuit and Supreme Court precedents are
2 clear that Petitioner lacks any rights beyond those conferred by statute, and no statute
3 entitles Petitioner to a bond hearing.”).

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

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

27 In similar cases, courts in this district have applied the test in *Lopez v. Garland*,
28 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022). *See, e.g., Sanchez-Rivera*, 2023 WL 139801,

1 at *5 (“[W]hile the *Mathews* [*v. Eldridge*, 424 U.S. 319 (1976)] factors may be well-
2 suited to determining whether due process requires a second bond hearing, they are not
3 particularly dispositive of whether prolonged mandatory detention has become
4 unreasonable in a particular case.”); *D.D. v. LaRose, et al.*, Case No. 25-cv-02581-BJC-
5 JLB, ECF No. 10 at 7 (S.D. Cal. Oct. 22, 2025) (considering a similar claim and finding
6 “the three-factor balancing test from *Lopez* . . . provides an appropriate assessment of
7 the possible constitutional implications of Petitioner’s ongoing detention without
8 process.”).

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

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

1 Second, the likely duration of future detention weighs against Petitioner. Petitioner has
2 already filed his application for asylum, which makes it likely that a merits hearing will
3 be scheduled soon. At that point his path to release or removal should be clear. Finally,
4 there is no indication of any delay in the removal proceedings on the part of the
5 government. *See* Exhibit 6 at 3.

6 Balancing the above factors, the record does not support a finding that “detention
7 has become so unreasonable as to require an initial bond hearing,” *Sanchez-Rivera*,
8 2023 WL 139801, at *6, or an order requiring Petitioner’s release.

9 Petitioner was lawfully detained when he applied for admission to the United
10 States. As a result, Petitioner is rightly considered an applicant for admission, and his
11 mandatory detention does not violate due process. *See Markov v. LaRose*, No. 25-CV-
12 3811 JLS (SBC), 2026 WL 92069 (S.D. Cal. Jan. 13, 2026) (“Petitioner’s length of
13 detention, without more, does not render his detention unreasonable.”); *Duran Romero*
14 *v. LaRose*, No. 25-cv-3567-AGS-VET, ECF No. 7 (S.D. Cal. Jan. 14, 2026); *Shahin v.*
15 *Noem*, No. 25-cv-2496-AGS-KSC, ECF No. 12 (S.D. Cal. Dec. 23, 2025); *Cordova*
16 *Cordova*, No. 25-cv-2426-BAS-DDL, ECF No. 9 (S.D. Cal. Nov. 14, 2025); *Mendez*
17 *Ramirez*, 612 F. Supp. 3d at 221; *Gonzalez Aguilar v. Wolf*, 448 F. Supp. 3d at 1212; *de*
18 *la Rosa Espinoza*, 2020 WL 3452967, at *6-8.

19 **V. CONCLUSION**

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

22
23 Dated: March 18, 2026

Respectfully submitted,

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United States Attorney

25 *s/Antonio Estrada*
26 ANTONIO ESTRADA
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27 Attorneys for Respondents
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