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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ZURAB KHURIA; ROLIA ZUMRATSHOEVA,

Petitioners,

v.

CHRISTOPHER LAROSE,

Respondents.

Case No.: 26-cv-1743-JLS-BJW

RETURN TO PETITION

I. INTRODUCTION

Petitioners request the Court to order their release from Immigration and Customs Enforcement (ICE) custody or require that they be afforded a bond hearing. As arriving aliens found to have a credible fear of persecution, however, Petitioners' detention is mandated by 8 U.S.C. § 1225(b)(1)(B)(ii) until the conclusion of removal proceedings. As Petitioners are subject to mandatory detention under 8 U.S.C. § 1225(b)(1)(B)(ii), the Court should deny Petitioners' requests for relief.

II. FACTUAL AND PROCEDURAL BACKGROUND[1]

Petitioner Khuria is a native and citizen of Russia. On August 14, 2025, he applied for admission to the United States at a port of entry. He did not then possess legal documentation to be in or enter the United States. He was determined to be an arriving alien inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I), placed into expedited removal proceedings under 8 U.S.C. § 1225(b)(1), and taken into Immigration and Customs Enforcement (ICE) custody pursuant to 8 U.S.C. § 1225(b)(1)(B). After receiving a positive credible fear determination, pursuant to 8 U.S.C. § 1225(b)(1)(B), Petitioner Khuria was issued a Notice to Appear (NTA). The filing of the NTA initiated removal proceedings, pursuant to 8 U.S.C. § 1229a, against Petitioner Khuria, and those proceedings remain ongoing. Within his removal proceedings under § 1229a, Petitioner Khuria has the opportunity to apply for relief from removal before an immigration judge (IJ), including asylum under 8 U.S.C. § 1158, withholding of removal under 8 U.S.C. § 1231(b)(3), and relief under the Convention Against Torture. Petitioner Khuria's individual merits hearing on his applications for relief from removal is scheduled for April 15, 2026.

Petitioner Zumratshoeva is a native and citizen of Russia. On August 14, 2025, she applied for admission to the United States at a port of entry. She did not then possess legal documentation to be in or enter the United States. She was determined to be an arriving alien inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I), placed into expedited removal proceedings under 8 U.S.C. § 1225(b)(1), and taken into Immigration and Customs Enforcement (ICE) custody pursuant to 8 U.S.C. § 1225(b)(1)(B). After receiving a positive credible fear determination, pursuant to 8 U.S.C. § 1225(b)(1)(B), Petitioner Zumratshoeva was issued a Notice to Appear (NTA). The filing of the NTA initiated removal proceedings, pursuant to 8 U.S.C. § 1229a, against Petitioner

[1] The attached exhibits are true copies, with redactions of private information, of documents obtained from ICE counsel.

1 Zumratshoeva, and those proceedings remain ongoing. Within her removal proceedings
2 under § 1229a, Petitioner has the opportunity to apply for relief from removal before an
3 immigration judge (IJ), including asylum under 8 U.S.C. § 1158, withholding of
4 removal under 8 U.S.C. § 1231(b)(3), and relief under the Convention Against Torture.
5 Petitioner Zumratshoeva's individual merits hearing on her applications for relief from
6 removal is scheduled for April 28, 2026.

7 Petitioners remain mandatorily detained under 8 U.S.C. § 1225(b)(1)(B)(ii).

8 **III. STATUTORY BACKGROUND**

9 Section 235 of the Immigration and Nationality Act (INA), codified at 8 U.S.C.
10 § 1225, applies to an "applicant for admission," defined as an "alien present in the
11 United States who has not been admitted" or "who arrives in the United States." 8
12 U.S.C. § 1225(a)(1). "[A]pplicants for admission fall into one of two categories, those
13 covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings v Rodriguez*,
14 583 U.S. 281, 287 (2018).

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

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IV. ARGUMENT

A. Petitioners' Claim are Barred Under 8 U.S.C. § 1252(g).

Respondents contend that judicial review over Petitioners' claims are 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."

Here, Petitioners' claims of unlawful detention necessarily arise from the Department of Homeland Security's[2] decision to commence removal proceedings against them because that decision unavoidably triggers mandatory detention under 8 U.S.C. § 1225(b)(1)(B)(ii) until the conclusion of removal proceedings. *See, e g*, *Wang v. United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at *6 (C.D. Cal. Aug. 18, 2010) (finding section 1252(g) bars judicial review of false imprisonment claim because the plaintiff's detention arose from the decision to commence removal proceedings, and in turn, the "statute mandating detention during removal proceedings of a person charged as an 'arriving alien.'").

As explained by another district court, removal proceedings are commenced when, as occurred here, "the alien is issued a Notice to Appear before an immigration court." *Herrera-Correra v. United States*, No. CV 08–2941 DSF (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008); *see also* Exhibit 3 (Notice to Appear). The government "may arrest the alien against whom proceedings are commenced and detain that individual until the conclusion of those proceedings." *Herrera-Correra*, 2008 WL 11336833, at *3. "Thus, an alien's detention throughout this process arises from the [government's] decision to commence proceedings" and review of claims arising from

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

1 such detention is barred under section 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d
2 947, 949 (9th Cir. 2007)); *see also Wang*, 2010 WL 11463156, at *6.
3 Because this habeas petition brings claims "arising from the decision or action
4 by the [government] to commence proceedings," review of Petitioners' claims are
5 barred under 8 U.S.C § 1252(g). Thus, the Court must dismiss the petition.
6 **B. Petitioners are Lawfully Detained Under the INA and the Constitution.**
7 Even if the Court assumed jurisdiction to review Petitioners' claims, the Court
8 must deny the habeas petition because Petitioner's detention is statutorily mandated
9 under 8 U.S.C. § 1225(b)(1)(B)(ii) and has not been unconstitutionally prolonged.
10 **1. Petitioners are mandatorily detained under 8 U.S.C. § 1225(b)(1).**
11 Petitioners are arriving aliens. As discussed above, arriving aliens are applicants
12 for admission who are subject to expedited removal proceedings, *see* 28 U.S.C.
13 § 1225(b)(1)(A)(i), unless—as occurred here—an asylum officer has determined that
14 they have a credible fear of persecution, *see* 28 U.S.C. § 1225(b)(1)(B)(ii). In such
15 cases, the INA mandates that "the alien *shall be detained* for further consideration of
16 the application for asylum." 8 U.S.C. § 1225(b)(1)(B)(ii) (emphasis added); *see also*
17 *Matter of M-S*, 27 I. & N. Dec. 509, 519 (AG 2019) ("all aliens transferred from
18 expedited to full [removal] proceedings after establishing a credible fear are ineligible
19 for bond"). Because Petitioners are arriving aliens found to have a credible fear of
20 persecution and placed in full removal proceedings, their detention is mandated by
21 section 1225(b) until the conclusion of removal proceedings. *See Jennings*, 583 U.S.
22 at 302 ("§§ 1225(b)(1) and (b)(2) mandate detention of aliens throughout the
23 completion of applicable proceedings").
24 Petitioners request that the Court order released from ICE custody. But the
25 Supreme Court has rejected such contention, explaining: ""Read most naturally, §§
26 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain
27 proceedings have concluded. . . . Nothing in the statutory text imposes any limit on the
28 length of detention. And neither § 1225(b)(1) nor § 1225(b)(2) says anything

whatsoever about bond hearings." *Jennings*, 583 U.S. at 297. Except for temporary parole granted at the discretion of the Attorney General "for urgent humanitarian reasons or significant public benefit" under 8 U.S.C. § 1182(d)(5), "there are no *other* circumstances under which aliens detained under § 1225(b) may be released." *Id.* at 300 (emphasis in original).

As Petitioners' removal proceedings are pending, and they have not been granted temporary parole, section 1225(b)(1)(B) mandates detention until proceedings have concluded. *Jennings*, 583 U.S. at 297 ("Once those proceedings end, detention under § 1225(b) must end as well."). Because Petitioners are lawfully detained under section 1225(b)(1)(B) and the statute does not entitle them to release at this time, the petition must be denied. *See, e.g.*, *Zelaya-Gonzalez v Matuszewski*, No. 23-CV-151 JLS-KSC, 2023 WL 3103811, at *3 (S.D. Cal. April 25, 2023) (applying *Jennings* to find that the petitioner had no right to release or a bond hearing).

2. Petitioners' detention is not unconstitutionally prolonged.

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

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

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

1 entitles Petitioner to a bond hearing.").

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

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

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 139801,
27 at *5 ("[W]hile the *Mathews* [*v. Eldridge*, 424 U.S. 319 (1976)] factors may be well-
28 suited to determining whether due process requires a second bond hearing, they are not

1 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-BJC-
3 JLB, ECF No. 10 at 7 (S.D. Cal. Oct. 22, 2025) (considering a similar claim and finding
4 "the three-factor balancing test from *Lopez* . . . provides an appropriate assessment of
5 the possible constitutional implications of Petitioner's ongoing detention without
6 process.").
7 Under *Lopez*, to determine whether continued mandatory detention has become
8 unreasonable, "the Court will look to the total length of detention to date, the likely
9 duration of future detention, and the delays in the removal proceedings caused by the
10 petitioner and the government." 631 F. Supp. 3d at 879.
11 First, Petitioners have been detained for about 7 months. Courts in this district
12 have found detention for much longer periods to be unreasonably prolonged. *See*
13 *Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS, 2024 WL 711607 at *5 (S.D. Cal.
14 Feb. 21, 2024) (32 months); *Sibomana*, 2023 WL 3028093, at *4 (19 months);
15 *Sanchez-Rivera*, 2023 WL 139801 at *6 (three years); *Kydyrali v. Wolf*, 499 F. Supp.
16 3d 768, 773 (S.D. Cal. 2020) (27 months); *Yagao*, 2019 WL 1429582, at *1 (42
17 months). The length of detention "is the most important factor." *Sanchez-Rivera*, 2023
18 WL 139801, at *6 (citation omitted). And Petitioners' current detention does not fall
19 within the range those courts have found to be unreasonable. Moreover, the length of
20 Petitioner's detention, by itself, does not favor granting habeas relief. *See Sadeqi v.*
21 *LaRose*, No. 25-cv-2587-RSH-BJW, 2025 WL 3154520, at *3 (S.D. Cal. Nov. 12,
22 2025) ("The Court agrees with Respondents that the length of Petitioner's detention to
23 date—almost 12 months—does not by itself, without more, establish prolonged
24 detention in violation of due process."). Second, the likely duration of future detention
25 weighs against Petitioners. Petitioners' individual merits hearings are scheduled for
26 April 15 and April 28, 2026, at which point their path to release or removal should be
27 clear. Finally, there is no indication of any delay in the removal proceedings on the part
28 of the government.

Balancing the above factors, the record does not support a finding that "detention has become so unreasonable as to require an initial bond hearing," *Sanchez-Rivera*, 2023 WL 139801, at *6, or an order requiring Petitioners' release.

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

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 26, 2026

Respectfully submitted,

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