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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 GIRMAY NEGASI,

Petitioner,

13
14 v.

15 WARDEN JEREMY CASEY, et al.,

16 Respondents.
17
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Case No.: 26-cv-01858-AGS-VET

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

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22 **I. INTRODUCTION**

23 Petitioner requests that the Court order Respondents to provide him a bond
24 hearing. This Court lacks jurisdiction because Petitioner's claims are barred by 8
25 U.S.C. § 1252(g). Moreover, as an applicant for admission to the United States found
26 to have a credible fear of persecution, Petitioner's detention is mandated by 8 U.S.C.
27 § 1225(b)(1)(B)(ii) until the conclusion of his removal proceedings. Accordingly, the
28 Court should deny Petitioner's request for relief.

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a citizen of Ethiopia. *See* Exhibit 1 (Notice to Appear).¹ On July 12, 2025, Petitioner was detained by U.S. Customs and Border Protection while attempting to unlawfully enter the United States. *See id.* At that time, he was found in the United States without proper documents authorizing his presence and he was not then admitted or paroled into the United States. *See id.* He was determined to be inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), placed in expedited removal proceedings pursuant to 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). *See id.* (stating Petitioner's Notice to Appear is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.). After receiving a positive credible fear determination by an asylum officer pursuant to 8 U.S.C. § 1225(b)(1)(B), Petitioner was issued a Notice to Appear (NTA). *See id.* The filing of the NTA initiated removal proceedings, pursuant to 8 U.S.C. § 1229a, against Petitioner. Those removal proceedings remain ongoing.

Within his removal proceedings under § 1229a, Petitioner has had 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. *See* Exhibit 2 (IJ Order dated 01.13.2026). ICE filed a Motion to Pretermit Petitioner's applications for relief, under an Asylum cooperation agreement. *See id.* The IJ set an individual merits hearing for the Motion to Pretermit on January 13, 2026. *See id.* On January 27, 2026, the IJ issued a written decision granting ICE's Motion to Pretermit and ordered Petitioner removed to Uganda based on the Asylum Cooperation Agreement. *See* Exhibit 3 (IJ Removal Order).

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

1 On February 17, 2026, Petitioner timely filed an appeal before the Board of
2 Immigration Appeals (BIA). *See* Exhibit 4 (BIA Appeal Receipt). As of April 8, 2026,
3 Petitioner’s appeal with the BIA remains pending. While his proceedings remain
4 ongoing, Petitioner remains mandatorily detained at the Otay Mesa Detention Center
5 under 8 U.S.C. § 1225(b)(1)(B).²

6 **III. STATUTORY BACKGROUND**

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

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

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28 ² Petitioner is not subject to a final order of removal. *See* 8 C.F.R. § 1241.1.

1 IV. 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's³ 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 1. The government "may
20 arrest the alien against whom proceedings are commenced and detain that individual
21 until the conclusion of those proceedings." *Herrera-Correra*, 2008 WL 11336833, at
22 *3. "Thus, an alien's detention throughout this process arises from the [government's]
23 decision to commence proceedings" and review of claims arising from such detention
24 is barred under section 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th
25 Cir. 2007)); *see also Wang*, 2010 WL 11463156, at *6.

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27 ³ "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 is statutorily mandated
7 under 8 U.S.C. § 1225(b)(1)(B)(ii) and has not been unconstitutionally prolonged.⁴

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”).

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26 ⁴ As Petitioner is not subject to a final order of removal, *see* 8 C.F.R. § 1241.1, he is not
27 subject to mandatory detention under 8 U.S.C. § 1231. Accordingly, an analysis under
28 8 U.S.C. § 1231 and *Zadvydas v. Davis*, 533 U.S. 678 (2001), is inapplicable to
Petitioner’s habeas petition. To the extent the Court disagrees, *see* ECF No. 1,
Respondents respectfully request an opportunity to supplement this response.

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

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

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

20 In *Jennings*, the Supreme Court evaluated the proper interpretation of 8 U.S.C.
21 § 1225(b). The Supreme Court stated that, “[r]ead most naturally, [8 U.S.C.]
22 §§ 1225(b)(1) and (b)(2) . . . mandate detention of applicants for admission until certain
23 proceedings have concluded.” *Id* at 297. In other words, neither 8 U.S.C. § 1225(b)(1)
24 nor § 1225(b)(2) “impose[] any limit on the length of detention” and “neither
25 § 1225(b)(1) nor § 1225(b)(2) say[] anything whatsoever about bond hearings.” *Id*. The
26 Supreme Court added that the sole means of release for noncitizens detained pursuant
27 to 8 U.S.C. §§ 1225(b)(1) or (b)(2) prior to removal from the United States is temporary
28 parole at the discretion of the Attorney General under 8 U.S.C. § 1182(d)(5). *Id* at 300

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

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

13 In *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 138–40
14 (2020), the Supreme Court once again addressed the due process rights of inadmissible
15 arriving noncitizens seeking initial entry into the United States. The Supreme Court
16 stated that such individuals have no due process rights “other than those afforded by
17 statute.” *Id.* at 107; *see also id.* at 140 (“[A]n alien in respondent’s position has only
18 those rights regarding admission that Congress has provided by statute.”). The
19 Supreme Court noted that its determination was supported by “more than a century of
20 precedent.” *Id.* at 138 (citing *Nishimura Ekiu v. United States*, 142 U.S. 651, 660
21 (1892); *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950); *Mezei*, 345 U.S.
22 at 212; *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)). Because the only process due
23 Petitioner is that afforded under section 1225(b), the Court must reject his claim that
24 his detention violates the Fifth Amendment’s Due Process Clause and deny his
25 requested relief. *See Thuraissigiam*, 591 U.S. at 138–40; *Mendoza-Linares v. Garland*,
26 51 F.4th 1146, 1167 (9th Cir. 2022) (“*Thuraissigiam* reaffirmed that ‘an alien seeking
27 initial admission to the United States requests a privilege and *has no constitutional*
28 *rights regarding his application*,’ meaning that such an alien ‘has only those rights

1 regarding admission that Congress has provided by statute.”) (emphases in original);
2 *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (“The recognized
3 liberty interests of U.S. citizens and aliens are not coextensive: the Supreme Court has
4 ‘firmly and repeatedly endorsed the proposition that Congress may make rules as to
5 aliens that would be unacceptable if applied to citizens.”) (quoting *Demore v. Kim*,
6 538 U.S. 510, 522 (2003)); *Zelaya-Gonzalez*, 2023 WL 3103811, at *4 (“Binding Ninth
7 Circuit and Supreme Court precedents are clear that Petitioner lacks any rights beyond
8 those conferred by statute, and no statute entitles Petitioner to a bond hearing.”).

9 Since the Supreme Court’s decision in *Thuraissigiam*, numerous courts have
10 acknowledged *Thuraissigiam*’s impact on the precise Fifth Amendment Due Process
11 Clause that Petitioner might have raised in this petition: Does an alien detained under
12 8 U.S.C. § 1225(b)(1) have a due process right to release or a bond hearing after being
13 detained for a certain period of time?

14 The answer is no. See *Gevorg v. Warden of Golden State Annex Detention*
15 *Facility*, 1:25-cv-00992-HBK (HC), 2025 WL 3496436, at *8 (E.D. Cal. Dec. 5, 2025)
16 (“To find Petitioner—an arriving asylum seeker who had not yet been admitted to the
17 United States and has an asylum application pending—is entitled to a bond hearing
18 solely based on the length of his detention would render § 1225(b)(1) meaningless and
19 disregard statutorily and constitutionally significant differences among the categories
20 of aliens seeking habeas relief.”); *Doe v. Bondi*, 1:25-cv-02712, 2025 WL 3516292, at
21 *5 (D. Colo. Nov. 4, 2025) (“[P]rocedural due process does not afford inadmissible
22 arriving aliens subject to prolonged detention a right to release or bond hearing prior
23 to the conclusion of removal proceedings.”); *Romero v. Bondi*, 1:25-cv-993, 2025 WL
24 2490659, at *3 (E.D. Va. July 2, 2025); *Mendoza-Linares v. Garland*, No. 21-cv-1169-
25 BEN (AHG), 2024 WL 3316306, *2 (S.D. Cal. June 10, 2024) (“[T]he Court finds that
26 Petitioner has no Fifth Amendment right to a bond hearing pending his removal
27 proceedings.”); *Zelaya-Gonzalez*, 2023 WL 3103811, at *3 (S.D. Cal. Apr. 25, 2023)
28 (same); *Rodriguez Figueroa v. Garland*, 535 F. Supp. 3d 122, 126–27 (W.D.N.Y.

1 2021); *Gonzales Garcia v. Rosen*, 513 F. Supp. 3d 329, 336 (W.D.N.Y. 2021); *St.*
2 *Charles v Barr*, 514 F. Supp. 3d 570, 579 (W.D.N.Y. 2021); *Petgrave v. Aleman*, 529
3 F. Supp. 3d 665, 667 (S.D. Tex. 2021); *Poonjani v. Shanahan*, 319 F. Supp. 3d 664,
4 650 (S.D.N.Y. 2018) (same).⁵

5 Indeed, in *Jennings*, the Supreme Court plainly held that, “[i]n sum, §§
6 1225(b)(1) and (b)(2) *mandate* detention of aliens throughout the completion of
7 applicable proceedings and not just until the moment those proceedings begin[.]” 583
8 U.S. at 845 (emphasis added), stressing that the language of Sections 1225(b)(1) and
9 (b)(2) “is quite clear.” *Id.* at 846 (emphases added).

10 Even if the Court infers a constitutional right against prolonged mandatory
11 detention, Petitioner’s claim still fails. Here, Petitioner has only been detained for about
12 269 days – that is, about 9 months. Petitioner’s detention falls significantly short of the
13 length courts have found to raise due process concerns. *See, e.g., Durand v. Allen*, No.
14 3:23-cv-00279-RBM-BGS, 2024 WL 711607, at *5 (S.D. Cal. Feb. 21, 2024) (detained
15 over two-and-a-half years); *Sanchez-Rivera v. Matuszewski*, No. 22-cv-1357-MMA
16 (JLB), 2023 WL 139801, at *6 (S.D. Cal. Jan. 9, 2023) (three years); *Yagao v.*
17 *Figueroa*, No. 17-cv-2224-AJB-MDD, 2019 WL 1429582, at *2 (S.D. Cal. March 29,
18 2019) (two years). Courts in this district have found detention for much longer periods
19 to be unreasonably prolonged. *See Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS,
20 2024 WL 711607 at *5 (S.D. Cal. Feb. 21, 2024) (32 months); *Sibomana*, 2023 WL
21 3028093, at *4 (19 months); *Sanchez-Rivera*, 2023 WL 139801 at *6 (three years);
22 *Kydyrali v Wolf*, 499 F. Supp. 3d 768, 773 (S.D. Cal. 2020) (20 months); *Yagao*, 2019
23 WL 1429582, at *1 (two years since last bond hearing). The length of detention “is the
24 most important factor.” *Sanchez-Rivera*, 2023 WL 139801, at *6 (citation omitted).

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28 ⁵ *But see Babaveisi v. LaRose*, 25-cv-3746-GPC-SBC, 2026 WL 76565, at *4 (S.D. Cal. Jan. 9, 2026) (noting “two different approaches” adopted by district courts).

1 Here, Petitioner’s current detention does not fall within the range these courts
2 have found to be unreasonable. Moreover, the length of Petitioner’s detention, by itself,
3 does not favor granting habeas relief. *See Sadeqi v. LaRose*, No. 25-cv-2587-RSH-
4 BJW, 2025 WL 3154520, at *3 (S.D. Cal. Nov. 12, 2025) (“The Court agrees with
5 Respondents that the length of Petitioner’s detention to date—almost 12 months—does
6 not by itself, without more, establish prolonged detention in violation of due process.”).

7 A recent case within this district, *Markov v. Larose*, is instructive. 25-CV-3811
8 JLS (SBC), 2026 WL 92069 (S.D. Cal. January 13, 2026). There, the Petitioner had
9 been detained under 8 U.S.C. § 1225 for “almost exactly one-year” without a bond
10 hearing. *Id.* at *2. The court nonetheless denied the petition, reasoning that the mere
11 “length of detention, *without more*, does not render his detention unreasonable.” *Id.*
12 (emphasis added).

13 The same result should follow here. Petitioner does not advance any facts or
14 arguments to distinguish his situation from any other applicant for admission with a
15 pending asylum case. Not only does the length of Petitioner’s detention fall
16 comparatively short of the length courts in this district have found to warrant habeas
17 relief, but the other *Lopez* factors do not favor habeas relief either. For example,
18 Petitioner’s appeal with BIA remains pending, so there’s no risk of “indefinite”
19 detention. Nor does he allege in his Petition that any delay in his immigration
20 proceedings is attributable to the U.S. Department of Homeland Security, or that the
21 Government has otherwise acted in bad faith. *See generally* ECF No. 1. These facts (or
22 lack thereof) militate against petitioner because “back-and-forth rulings, plus general
23 administrative backlogs, [which] were to blame for [the petitioner’s] lengthy detention,”
24 did not “turn otherwise legal detention into unconstitutional punishment.” *See Doe v.*
25 *Bondi*, 2025 WL 3516292, at *8-9 (quoting *Banyee v. Garland*, 115 F.4th 928, 934 (8th
26 Cir. 2024)).

27 If this Court were to grant a bond hearing based solely on Petitioner’s length in
28 mandatory detention and his pending appeal to BIA, this would create a precedent

1 where every similarly situated alien simply waits for an adverse ruling from an
2 Immigration Judge, appeal the decision to BIA, and request immediate release after a
3 year while their appeal remains pending. This cannot be the rule for such an
4 unremarkable and common scenario Petitioner is in as an applicant for admission who
5 is mandatorily detained under 1225(b)(1). Such a rule is at odds with binding “Ninth
6 Circuit and Supreme Court precedent[.]” *See Zelaya-Gonzalez*, 2023 WL 3103811, at
7 *3-4; *see also Gevorg*, 2025 WL 3496436, at *8.

8 Petitioner was detained after illegally entering the United States. Thus, Petitioner
9 is rightly considered an applicant for admission, and his mandatory detention does not
10 violate due process. *See Duran Romero v. LaRose*, No. 25-cv-3567-AGS-VET, ECF
11 No. 7 (S.D. Cal. Jan. 14, 2026); *Shahin v. Noem*, No. 25-cv-2496-AGS-KSC, ECF No.
12 12 (S.D. Cal. Dec. 23, 2025); *Cordova Cordova*, No. 25-cv-2426-BAS-DDL, ECF No.
13 9 (S.D. Cal. Nov. 14, 2025); *Mendez Ramirez v Decker*, 612 F. Supp. 3d 200, 221
14 (S.D.N.Y. 2020); *Gonzalez Aguilar v. Wolf*, 448 F. Supp. 3d 1202, 1212 (D.N.M. 2020);
15 *de la Rosa Espinoza v. Guadian*, Case No. 20-3126-JWL, 2020 WL 3452967, at *6-8
16 (D. Kansas June 24, 2020).

17 V. CONCLUSION

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

20
21 Dated: April 8, 2026

Respectfully submitted,

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