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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
10

11 SIBAN VELAT,  
12  
Petitioner,  
13  
v.  
14  
15 TODD LYONS, et al.,  
16  
Respondents.  
17  
18

No.: 26-cv-01746-BAS-BLM  
**RETURN TO PETITION FOR WRIT  
OF HABEAS CORPUS**

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21  
22 **I. INTRODUCTION**

23 Petitioner requests that the Court order his release or Respondents to provide him  
24 a bond hearing. *See* ECF No. 1, at 8. This Court lacks jurisdiction because Petitioner's  
25 claims are barred by 8 U.S.C. § 1252(g). Moreover, as an applicant for admission to  
26 the United States found to have a credible fear of persecution, Petitioner's detention is  
27 mandated by 8 U.S.C. § 1225(b)(1)(B)(ii) until the conclusion of his removal  
28 proceedings. Accordingly, the Court should deny Petitioner's request for relief.

1                                   **II. FACTUAL AND PROCEDURAL BACKGROUND**

2           Petitioner is a citizen of Turkey. *See* Exhibit 1 (Notice to Appear).<sup>1</sup> On February  
3 21, 2025, Petitioner was detained by U.S. Customs and Border Protection while  
4 attempting to unlawfully enter the United States. *See id.* At that time, he did not have  
5 any valid entry documents to enter the United States and was not then admitted or  
6 paroled into the United States. *See id.* He was determined to be inadmissible under 8  
7 U.S.C. § 1182(a)(7)(A)(i)(I), placed in expedited removal proceedings pursuant to 8  
8 U.S.C. § 1225(b)(1), and taken into Immigration and Customs Enforcement (ICE)  
9 custody pursuant to 8 U.S.C. § 1225(b)(1)(B). *See* Exhibit 2 (Notice and Order of  
10 Expedited Removal). After receiving a positive credible fear determination by an  
11 asylum officer pursuant to 8 U.S.C. § 1225(b)(1)(B), Petitioner was issued a Notice to  
12 Appear (NTA). *See* Exhibit 1; *see also* Exhibit 3 (Convention Against Torture  
13 Assessment Worksheet). The filing of the NTA initiated removal proceedings, pursuant  
14 to 8 U.S.C. § 1229a, against Petitioner. *See* Exhibit 1. Those removal proceedings  
15 remain ongoing.

16           Within his removal proceedings under § 1229a, Petitioner has had the  
17 opportunity to apply for relief from removal before an immigration judge (IJ), including  
18 asylum under 8 U.S.C. § 1158, withholding of removal under 8 U.S.C. § 1231(b)(3),  
19 and relief under the Convention Against Torture.

20           On February 3, 2026, an initial individual merits hearing was held on Petitioner’s  
21 relief application with Petitioner represented by counsel. *See* Exhibit 4 (PCQS Printout).  
22 Due to insufficient time to complete the hearing, the merits hearing was continued to  
23 February 17, 2026. *See id.* Again, due to insufficient time to complete the hearing,  
24 Petitioner’s merit hearing was continued to February 27, 2026. *See id.* On February 27,  
25 2026, Petitioner’s merits hearing was completed. *See id.* The IJ denied all of Petitioner’s  
26

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

1 applications for relief and ordered Petitioner removed to Turkey. *See* Exhibit 5 (IJ  
2 Removal Order)

3 On March 23, 2026, Petitioner timely filed an appeal before the Board of  
4 Immigration Appeals (BIA). *See* Exhibit 6 (BIA Appeal); *See also* Exhibit 4. As of  
5 April 14, 2026 (today), Petitioner’s appeal remains pending. *See* Exhibit 4. While his  
6 proceedings remain ongoing, Petitioner remains mandatorily detained at the Otay Mesa  
7 Detention Center under 8 U.S.C. § 1225(b)(1)(B).<sup>2</sup>

### 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).

27  
28 <sup>2</sup> 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’s<sup>3</sup> 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 (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 <sup>3</sup> “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.<sup>4</sup>

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  
24  
25  
26 <sup>4</sup> 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, 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).<sup>5</sup>

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. Petitioner’s detention falls significantly short  
12 of the length courts have found to raise due process concerns. *See, e.g., Durand v.*  
13 *Allen*, No. 3:23-cv-00279-RBM-BGS, 2024 WL 711607, at \*5 (S.D. Cal. Feb. 21,  
14 2024) (detained over two-and-a-half years); *Sanchez-Rivera v Matuszewski*,  
15 No. 22-cv-1357-MMA (JLB), 2023 WL 139801, at \*6 (S.D. Cal. Jan. 9, 2023) (three  
16 years); *Yagao v. Figueroa*, No. 17-cv-2224-AJB-MDD, 2019 WL 1429582, at  
17 \*2 (S.D. Cal. March 29, 2019) (two years).

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

27  
28 <sup>5</sup> *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 the possible constitutional implications of Petitioner’s ongoing detention without  
2 process.”).

3 Under *Lopez*, to determine whether continued mandatory detention has become  
4 unreasonable, “the Court will look to [1] the total length of detention to date, [2] the  
5 likely duration of future detention, and [3] the delays in the removal proceedings caused  
6 by the petitioner and the government.” 631 F. Supp. 3d at 879.

7 **Duration of Detention.** Here, Petitioner has been detained for about 14 months.  
8 Courts in this district have found detention for much longer periods to be unreasonably  
9 prolonged. *See Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS, 2024 WL 711607 at  
10 \*5 (S.D. Cal. Feb. 21, 2024) (32 months); *Sibomana*, 2023 WL 3028093, at \*4 (19  
11 months); *Sanchez-Rivera*, 2023 WL 139801 at \*6 (three years); *Kydyrali v. Wolf*, 499  
12 F. Supp. 3d 768, 773 (S.D. Cal. 2020) (20 months); *Yagao*, 2019 WL 1429582, at \*1  
13 (two years since last bond hearing). The length of detention “is the most important  
14 factor.” *Sanchez-Rivera*, 2023 WL 139801, at \*6 (citation omitted).

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

21 A recent case within this district, *Markov v. Larose*, is instructive. 25-CV-3811  
22 JLS (SBC), 2026 WL 92069 (S.D. Cal. January 13, 2026). There, the Petitioner had  
23 been detained under 8 U.S.C. § 1225 for “almost exactly one-year” without a bond  
24 hearing. *Id.* at \*2. Although he alleged that his final merits hearing had been postponed  
25 “five times due to the government,” and there was “no merits hearing scheduled,” the  
26 court nonetheless denied the petition. *Id.* at \*2. In doing so, it reasoned that the mere  
27 “length of detention, *without more*, does not render his detention unreasonable.” *Id.*  
28 (emphasis added).

1 Indeed, courts have denied petitions from individuals detained under §  
2 1225(b)(1) without an individualized bond hearing—for a period *longer* than  
3 Petitioner’s duration of detention. *See, e.g., Doe v. Andrews*, 1:25-cv-00333-JLT-HBK  
4 (HC), 2025 WL 3280777, at \*9 (E.D. Cal. Nov. 25, 2025) (pending report and  
5 recommendation collecting cases); *D.A.F. v. Warden, Stewart Detention Center*, 4:20-  
6 cv-79-CDL-MSH, 2020 WL 9460467, at \*10-11 (M.D. Ga. May 28, 2020) (finding 15  
7 months of detention “failed to rise to the level of unreasonably prolonged detention”);  
8 *Traore v. Decker*, No. 19-cv-4612 (ALC), 2019 WL 3890227, at \*5 (S.D.N.Y. August  
9 19, 2019) (denying petition for petitioner detained under 1225(b)(2) for around 20  
10 months); *Yacouba v. Decke*, No. 18-13879 (JLL), 2019 WL 1569823, at \*3 (D.N.J. Apr.  
11 10, 2019) (finding detention for just over 15 months insufficient to trigger due process  
12 detention limitations); *Fatule-Roque v. Lowe*, No. 3:17-cv-1981, 2018 WL 3584696, at  
13 \*5 (M.D. Pa. July 26, 2018) (finding fifteen-month detention not unreasonable in light  
14 of the petitioner’s filing of multiple motions to continue immigration hearings and to  
15 correct an error in an I-360 application); *but see Gonzalez v. Bonnar*, No. 18-cv-05321-  
16 JSC, 2019 WL 330906, at \*3 (N.D. Cal. Jan. 25, 2019) (“In general, as detention  
17 continues past a year, courts become extremely wary of permitting continued custody  
18 absent a bond hearing.”).

19 The same result should follow here. Petitioner, who has been detained for about  
20 14 months, does not allege any facts or advance any argument to distinguish his  
21 situation from any other applicant for admission with a pending asylum case. Not only  
22 does the length of Petitioner’s detention fall comparatively short of the length courts in  
23 this district have found to warrant habeas relief, but the other *Lopez* factors do not favor  
24 habeas relief either.

25 **Likely Duration of Future Detention.** Petitioner already had a merits hearing  
26 before an IJ, his applications for relief have been adjudicated and denied, and he has a  
27 pending BIA appeal. *See* Exhibit 6, *see also* Exhibits 4-5. Critically, “unlike aliens  
28 detained under 8 U.S.C. § 1231 whose detention could be ‘indefinite’ and ‘potentially

1 permanent,' aliens detained under § 1225(b) face a definite termination point." See  
2 *Gevorg*, 2025 WL 3496436, at \*7.

3 So it cannot be disputed that "Petitioner's detention [under § 1225(b)] will end  
4 once his petition for asylum is granted or denied." See *id.*; see also *Prieto-Romero v.*  
5 *Clark*, 534 F.3d 1053, 1063 (9th Cir. 2008) (denying habeas relief when "two of  
6 [petitioner's] three years of federal custody have passed while he has been awaiting"  
7 judicial review because, "although his removal has certainly been delayed by his pursuit  
8 of judicial review of his administratively final removal order, he is not stuck in a  
9 'removable-but-not removable limbo,' as the petitioners in *Zadvydas* were[.]").

10 Here, Petitioner's detention cannot be described as "indefinite" because his  
11 detention has a definite termination point (i.e., the BIA adjudicating his appeal), unlike  
12 the Petitioners in *Zadvydas*. See *Demore v. Kim*, 538 U.S. at 512 (distinguishing  
13 *Zadyvdas*, because while the period of detention at issue there was "indefinite" and  
14 "potentially permanent," the detention in *Kim*, under § 1226(c) "has a definite  
15 termination point").

16 **Delays caused by Petitioner or Government.** This final factor also weighs  
17 against Petitioner. As an initial matter, the delay between his unlawful entry into the  
18 United States and the issuance of his NTA does not rest solely with the Government.  
19 As Petitioner does not dispute, he was subject to an Expedited Removal Order. The  
20 Expedited Removal order was later vacated after his April 2025 Credible Fear  
21 Interview, which resulted in the issuance of the NTA. See Exhibit 1; see also Exhibit 3.

22 But Petitioner also contributed to the delay. In fact, all continuances on his  
23 removal proceedings have been to the benefit of Petitioner. See Exhibit 3.<sup>6</sup> His  
24 continuance requests have therefore naturally contributed to his immigration  
25 proceeding being delayed until February 27, 2026. Courts have denied relief to  
26 petitioners detained more than a year—when they have contributed to the delay. See,

27

28 <sup>6</sup> See FN 2 for definition of Adjournment Codes.

1 e.g., *Traore*, 2019 WL 3890227, at \*5 (denying petition for petitioner detained under  
2 1225(b)(2) for around 20 months because, “[w]hile this Court does not fault or punish  
3 [Petitioner] for aggressively litigating his immigration proceedings, the multiple  
4 motions requiring briefing schedules and the adjustment of hearing dates naturally  
5 prolongs his detention”); *Fatule-Roque*, 2018 WL 3584696, at \*5 (finding 15 month  
6 detention not unreasonable in light of the petitioner’s filing of multiple motions to  
7 continue immigration hearings and to correct an error in an I-360 application).

8 Nor does Petitioner allege anywhere in his Petition or accompanying exhibits that  
9 the U.S. Department of Homeland Security has sought any continuances or otherwise  
10 delayed his immigration proceedings. *See generally* ECF No. 1.

11 The delay factor therefore weighs against Petitioner. *See Demore v Kim*, 538  
12 U.S. at 530-31 (“Respondent was detained for somewhat longer than the average...but  
13 respondent himself had requested a continuance of his removal hearing.”); *Doe v.*  
14 *Andrews*, 2025 WL 3280777, at \*11 (“While Petitioner certainly has the right to pursue  
15 all available avenues to combat his removal, post-*Jennings*, he does not have the right  
16 to parlay the resulting delay into a bond hearing.”) (citation omitted).

17 If this court were to grant a bond hearing based solely on Petitioner’s mandatory  
18 detention for a little more than a year—without requiring more (i.e., foot-dragging or  
19 bad-faith by DHS)—this would create a precedent where every similarly situated alien  
20 simply prolongs out their immigration proceeding with continuances and appeals to  
21 only request immediate release after a year while their case remains pending.

22 This cannot be the rule for such an unremarkable and common scenario  
23 Petitioner is in as an applicant for admission who is mandatorily detained under  
24 1225(b)(1). Such a rule is at odds with binding “Ninth Circuit and Supreme Court  
25 precedent[.]” *See Zelaya-Gonzalez*, 2023 WL 3103811, at \*3-4.

26 Petitioner was detained as an alien present in the United States who has not been  
27 admitted or paroled. Thus, Petitioner is rightly considered an applicant for admission,  
28 and his mandatory detention does not violate due process. *See Duran Romero v. LaRose*,

1 No. 25-cv-3567-AGS-VET, ECF No. 7 (S.D. Cal. Jan. 14, 2026); *Shahin v. Noem*, No.  
2 25-cv-2496-AGS-KSC, ECF No. 12 (S.D. Cal. Dec. 23, 2025); *Cordova Cordova*, No.  
3 25-cv-2426-BAS-DDL, ECF No. 9 (S.D. Cal. Nov. 14, 2025); *Mendez Ramirez v.*  
4 *Decker*, 612 F. Supp. 3d 200, 221 (S.D.N.Y. 2020); *Gonzalez Aguilar v. Wolf*, 448 F.  
5 Supp. 3d 1202, 1212 (D.N.M. 2020); *de la Rosa Espinoza v. Guadian*, Case No. 20-  
6 3126-JWL, 2020 WL 3452967, at \*6-8 (D. Kansas June 24, 2020).

7 **C. Conditions of Confinement Allegations are Not Proper Habeas Claims**

8 To the extent Petitioner asserts claims regarding conditions of his confinement,  
9 ECF No. 1 at 7 (claiming detention have resulted in both “mental and physical  
10 problems”), the Court lacks jurisdiction over such claims because they do not challenge  
11 the lawfulness of his custody. An individual may seek habeas relief under 28 U.S.C. §  
12 2241 if he is “in custody” under federal authority “in violation of the Constitution or  
13 laws or treaties of the United States.” 28 U.S.C. § 2241(c). But habeas relief is available  
14 to challenge only the legality or duration of confinement. *Pinson v. Carvajal*, 69 F.4th  
15 1059, 1067 (9th Cir. 2023); *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979); *Dep’t*  
16 *of Homeland Security v. Thraissigiam*, 591 U.S. 103, 117 (2020) (The writ of habeas  
17 corpus historically “provide[s] a means of contesting the lawfulness of restraint and  
18 securing release.”). The Ninth Circuit squarely explained how to decide whether a  
19 claim sounds in habeas jurisdiction: “[O]ur review of the history and purpose of habeas  
20 leads us to conclude the relevant question is whether, based on the allegations in the  
21 petition, release is *legally required* irrespective of the relief requested.” *Pinson*, 69  
22 F.4th at 1072 (emphasis in original); *see also Nettles v. Grounds*, 830 F.3d 922, 934  
23 (9th Cir. 2016) (The key inquiry is whether success on the petitioner’s claim would  
24 “necessarily lead to immediate or speedier release.”).

25 Here, Petitioner’s claims regarding the conditions of his confinement do not  
26 arise under § 2241. *See Nettles*, 830 F.3d at 933 (“We have long held that prisoners  
27 may not challenge mere conditions of confinement in habeas corpus.”); *Giron Rodas*  
28 *v. Lyons*, No. 25cv1912-LL-AHG, 2025 WL 2300781, at \*3 (S.D. Cal. Aug. 1, 2025)

1 (“Like in *Pinson*, the Court lacks jurisdiction over Petitioner’s § 2241 habeas petition  
2 since it cannot be fairly read as attacking ‘the legality or duration of confinement.’”)  
3 (quoting *Pinson*, 69 F.4th at 1065); *Guselnikov v. Noem*, No. 25-cv-1971-BTM-KSC,  
4 2025 WL 2300873, at \*1 (S.D. Cal. Aug. 8, 2025) (finding petitioners’ claims did not  
5 arise under § 2241 because they were not arguing they were unlawfully in custody and  
6 receiving the requested relief would not entitle them to release). Thus, Petitioner’s  
7 claim does not arise under § 2241 and the petition should be dismissed.

8 **V. CONCLUSION**

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

11 Dated: April 14, 2026

Respectfully submitted,

12  
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