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9
10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12
13 DESMOND AKUOH NTANGKU,

14 Petitioner,

15 v.

16
17 CHRISTOPHER LAROSE,

18 Respondent.
19

Case No.: 26-cv-02257-AGS-VET

**RESPONDENT'S SUPPLEMENTAL
BRIEFING**

20
21 **I. INTRODUCTION**

22 Petitioner asserts the government's motion to pretermite terminated Petitioner's
23 asylum application, which in turn, removed him from the authority of mandatory
24 detention under 8 U.S.C. § 1225(b)(1). However, there is no statutory or legal authority
25 to support Petitioner's contention. In fact, cases in this district have reached the opposite
26 conclusion. Petitioner's detention is mandatory under 8 U.S.C. § 1225(b)(1), even when
27 an immigration judge grants the government's motion to pretermite his asylum claim.
28 Petitioner simply has no footing to request the Court to interpret the government's

1 motion to pretermite as terminating Petitioner's proceedings under 8 U.S.C. § 1229a and
2 somehow transforming Petitioner's detention authority away from § 1225(b)(1).
3 Accordingly, the Court should deny Petitioner's requests for relief and deny the petition.

4 II. FACTUAL AND PROCEDURAL BACKGROUND

5 There is no dispute Petitioner entered the United States without inspection on or
6 about October 17, 2025 and subsequently received a positive credible fear
7 determination by an asylum officer. *See* ECF No. 13 at 4; ECF No. 14 at 2. Within his
8 removal proceedings, Petitioner filed applications for relief from removal, including
9 Asylum relief under 8 U.S.C. § 1158. *See* ECF No. 13 at 5. The Department of
10 Homeland Security (DHS) subsequently filed a Motion to Pretermite Petitioner's
11 Applications for relief because he is subject to removal to Uganda under the Asylum
12 Cooperative Agreement (ACA) between the U.S. and Uganda. *See id.*; ECF No. 14-3.

13 On March 23, 2026, an immigration judge ("IJ") granted DHS' motion and
14 ordered Petitioner is subject to removal to Uganda. *See* ECF No. 14-3. In reaching that
15 decision, the IJ found DHS provided Petitioner with "reasonable notice" of its intent to
16 remove Petitioner to Uganda, and that despite Petitioner expressing fear of being
17 removed to Uganda, Petitioner failed to meet his burden of "prov[ing] beyond a
18 preponderance of the evidence that he will more likely than not be persecuted or tortured
19 in Uganda." *See id.* Two days later, Petitioner filed an appeal with the Board of
20 Immigration Appeals (BIA). *See* Exhibit 1. In it, Petitioner asks the BIA to reconsider
21 the decision of the immigration judge and "be granted the opportunity to continue with
22 [his] asylum application in the United States." *See id.* The appeal is still pending before
23 the BIA. Since his apprehension, Petitioner has remained detained under 8 U.S.C.
24 § 1225(b)(1).

25 On May 4, 2026, Petitioner filed an amended habeas petition pursuant to 8 U.S.C.
26 § 2241 with the Court. ECF No. 13. On May 8, 2026, Respondent filed a return and a
27 few days later Petitioner filed a traverse. *See* ECF Nos. 14 and 15. On June 11, 2026,
28 this Court held a hearing on the amended petition. The Court denied the petition on due

1 process grounds and ordered the parties to provide supplemental briefing addressing
2 Petitioner's third argument that he is no longer statutorily detained under 8 U.S.C. §
3 1225(b)(1) due to the government's motion to pretermitt his asylum claim.

4 III. ARGUMENT

5 A. Petitioner is Properly Detained Under 8 U.S.C. § 1225(b)(1).

6 The government's motion to pretermitt has no bearing on Petitioner's detention
7 and he remains properly detained under 8 U.S.C. § 1225(b)(1). "Any alien who is
8 physically present in the United States or who arrives in the United States, ...
9 irrespective of such alien's status, may apply for asylum[.]" 8 U.S.C.S. § 1158(a)(1).
10 An arriving alien who "indicates either an intention to apply for asylum. ... or a fear of
11 persecution," is referred for a fear interview. 8 U.S.C. § 1225(b)(1)(A)(ii). "If an
12 immigration officer determines after that interview that the alien has a credible fear of
13 persecution, 'the alien shall be detained for further consideration of the application for
14 asylum.'" *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (quoting
15 §1225(b)(1)(B)(ii)). "Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate
16 detention of applicants for admission until certain proceedings have concluded." *Id.* at
17 297. Because Petitioner was found to have a credible fear of persecution, he is subject
18 to detention under § 1225(b)(1)(B)(ii). *See* ECF No. 14 at 2. Then, "[o]nce [Petitioner's]
19 proceedings end, detention under §1225(b) must end as well. Until that point, however,
20 nothing in the statutory text imposes any limit on the length of [Petitioner's] detention."
21 *Jennings*, 583 U.S. at 297.

22 Moreover, the IJ's granting of the government's pretermittion of Petitioner's
23 asylum application did not terminate his asylum application. Subject to a few narrow
24 exceptions, the ability to apply for asylum under 8 U.S.C.S. § 1158(a)(1) "shall not
25 apply to an alien if the Attorney General determines that the alien may be removed,
26 pursuant to a bilateral or multilateral agreement," to a third country where the alien's
27 life and freedom are not threatened, and "where the alien would have access to a full
28 and fair procedure for determining a claim to asylum or equivalent temporary

1 protection[.]” 8 U.S.C.S. § 1158(a)(2)(A); *see* 8 C.F.R. § 1240.11(h)(2). An
2 immigration judge (“IJ”) has the authority to apply 8 U.S.C.S. § 1158(a)(2)(A). *See* 8
3 C.F.R. § 1240.11(h)(1). An applicant for admission can appeal the decision of an
4 immigration judge to the Board of Immigration Appeals (“BIA”). 8 C.F.R. § 1240.15.
5 Here, the IJ granted the government’s motion to pretermite Petitioner’s asylum
6 application and ordered that Petitioner be removed to Uganda. ECF No. 14 at 2. Prior
7 to the IJ’s decision, Petitioner was provided reasonable notice and the opportunity to
8 prove he feared persecution or torture in Uganda. *See* ECF No. 14-3. Petitioner then
9 filed an appeal of the removal order to the BIA. *See* Exhibit 1. As such, Petitioner’s
10 proceedings have not been terminated nor has Petitioner’s removal order become
11 administratively final.

12 Petitioner’s “removal period” begins on “[t]he date the order of removal becomes
13 administratively final.” 8 U.S.C.S. § 1231(a)(1)(B)(i). “A removal order ‘become[s]
14 final upon the earlier of (i) a determination by the [BIA] affirming such order; or (ii)
15 the expiration of the period in which the alien is permitted to seek review of such order
16 by the [BIA].” *Yuzi Cui v. Garland*, 13 F.4th 991, 996 (9th Cir. 2021) (alterations in
17 original) (quoting 8 U.S.C. § 1101(a)(47)(B)); *see* 8 C.F.R. § 1241.1(a) (An IJ’s order
18 of removal becomes administratively final in several ways, including “[u]pon dismissal
19 of an appeal by the Board of Immigration Appeals.”).

20 Here, Petitioner’s appeal is still pending before the BIA, so the IJ’s grant of DHS’
21 pretermission motion and order of removal of Petitioner to Uganda is not yet
22 administratively final. Moreover, Petitioner has already conceded that he is subject to
23 mandatory detention under § 1225(b) while his appeal to the BIA is pending.
24 Petitioner’s amended habeas petition notes that mandatory detention under § 1225
25 applies to “people like Mr. Akuoh, who present themselves for inspection at the border
26 and ... make asylum and other fear-based claims. Such immigrants are detained under
27 § 1225 not only during their initial proceedings but also when they appeal to the BIA.”
28 ECF No. 13 at 6 (citations omitted). Petitioner then incorrectly contends that his

1 “asylum application is not an issue on appeal.” ECF No. 22 at 3-4. In his appeal,
2 Petitioner states: “I am [hereby] requesting that the decision of the immigration judge
3 be reconsidered and I be granted the opportunity to *continue* with my asylum application
4 in the United State[s]. I appeal to *continue* with my asylum application[.]” See Exhibit
5 1 (emphasis added). Were the BIA to find in Petitioner’s favor, his asylum claim would
6 continue to be under further consideration before an IJ. Petitioner simply misstates that
7 his asylum claim is “no longer a live issue[.]” ECF No. 22 at 3.

8 There are cases in this district that support Respondent’s position that Petitioner
9 is still detained under § 1225(b)(1). In *Nche v. Divver*, the court found that petitioner
10 was subject to mandatory detention under § 1225(b)(1)(B)(ii) despite an IJ’s prior grant
11 of DHS’ motion to pretermitt petitioner’s asylum application. *Nche v. Divver*, No. 26-
12 cv-2449-JES-DDL, 2026 U.S. Dist. LEXIS 96746, at *3, 5-6 (S.D. Cal. May 1, 2026).
13 In assessing the *Banda* factors to petitioner’s case, the court noted that an IJ had already
14 issued a pretermission order for petitioner to be removed to Uganda. *Nche*, 2026 U.S.
15 Dist. LEXIS 96746, at *10 (citations omitted). Yet, the court found that petitioner was
16 detained under § 1225(b)(1) despite “the IJ’s pretermission of [petitioner’s] claims for
17 relief and the propriety of Uganda as a designated third country for removal.” *Nche*,
18 2026 U.S. Dist. LEXIS 96746, at *10 (citations omitted); see *Kwalar v. Warden, Otay*
19 *Mesa Det. Ctr.; et al.* No. 3:26-cv-2447-JES-GC, 2026 U.S. Dist. LEXIS 96750, at *9
20 (S.D. Cal. May 1, 2026) (same). Similarly, in *Islamov v. Doe*, DHS moved to pretermitt
21 Petitioner’s applications based on the Asylum Cooperation Agreement (“ACA”) with
22 Uganda. No. 26-cv-01528-JES-VET, 2026 WL 1179873, at *1 (S.D. Cal. Apr. 30,
23 2026). The IJ granted the motion. *Id.* Thereafter, petitioner appealed the IJ’s removal
24 order to the BIA. *Id.* The court in *Islamov* found that petitioner was properly detained
25 under § 1225(b) and proceeded to analyze Petitioner’s due process claims. See *id.*

26 Petitioner concedes in his supplement brief that he could not find any appellate
27 or district court cases that would support his assertion that the government’s motion
28 took him out of §1225(b)(1)’s mandatory detention provisions. See ECF No. 22 at 5.

1 That is because Petitioner's proceedings are still pending and he remains properly
2 detained under 8 U.S.C. §1225(b)(1). And the Supreme Court confirmed that
3 § 1225(b)(1) mandates detention until Petitioner's removal proceedings have
4 concluded. *See Jennings*, 583 U.S. at 297. Accordingly, this Court should find that
5 Petitioner is still subject to mandatory detention under §1225(b)(1).

6 Finally, to the extent Petitioner is seeking to amend his habeas petition through
7 his supplemental brief by arguing his detention is not mandatory under § 1225(b)(1),
8 such amendment is not permissible. *See Estate of Munoz v. United States*, No. 23-cv-
9 1422-JES-SBC, 2024 WL 584430, at *3 (S.D. Cal. Feb. 13, 2024). Nonetheless, no
10 other authority applies to Petitioner's detention and the Court has already correctly ruled
11 on Petitioner's due process claims.

12 IV. CONCLUSION

13 For the reasons stated herein, Respondent respectfully requests that the Court
14 deny Petitioner's habeas petition.

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16 Dated: June 25, 2026

Respectfully submitted,

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