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

11 LARICIA AKUM UFERK,

12 Petitioner,
13

14 v.

15 DANIEL BRIGHTMAN, et al.,

16 Respondents.
17
18

Case No.: 26-cv-02354-RBM-DDL

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

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21 **I. INTRODUCTION**

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23 Petitioner requests that the Court order Respondents to provide her 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.

1 **II. FACTUAL AND PROCEDURAL BACKGROUND**

2 Petitioner is a citizen of Cameroon. *See* Exhibit 1 (Notice to Appear).¹ On
3 September 23, 2025, Petitioner was detained by U.S. Customs and Border Protection
4 while attempting to unlawfully enter the United States. *See id.* At that time, she did not
5 have any valid entry documents to enter the United States and was not then admitted or
6 paroled into the United States. *See id.* After receiving a positive credible fear
7 determination by an asylum officer pursuant to 8 U.S.C. § 1225(b)(1)(B), Petitioner was
8 issued a Notice to Appear (NTA). *See id.* The filing of the NTA initiated removal
9 proceedings, pursuant to 8 U.S.C. § 1229a, against Petitioner. Those removal
10 proceedings remain ongoing.

11 Within his removal proceedings under § 1229a, Petitioner has had the
12 opportunity to apply for relief from removal before an immigration judge (IJ), including
13 asylum under 8 U.S.C. § 1158, withholding of removal under 8 U.S.C. § 1231(b)(3),
14 and relief under the Convention Against Torture. The Department of Homeland
15 Security (DHS) filed a motion to pretermitt Petitioner’s applications for relief due to an
16 asylum cooperation agreement with Uganda. *See* Exhibit 2 (IJ Removal Order). On
17 February 13, 2026, the immigration judge (IJ) granted the Department of Homeland
18 Security’s (DHS) motion to pretermitt Petitioner’s applications for relief, and ordered
19 Petitioner removed to Uganda. *See id.* On February 20, 2026, Petitioner timely filed an
20 appeal before the Board of Immigration Appeals (BIA). *See* Exhibit 3 (BIA Receipt
21 Notice). As of April 21, 2026 (today), Petitioner’s appeal remains pending.

22 While his proceedings remain ongoing, Petitioner remains mandatorily detained
23 at the Otay Mesa Detention Center under 8 U.S.C. § 1225(b)(1)(B).² *See* Exhibit 3.
24 Petitioner has been in custody for a little over 6 months.

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

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

1 **III. STATUTORY BACKGROUND**

2 Section 235 of the Immigration and Nationality Act (INA), codified at 8 U.S.C.
3 § 1225, applies to an “applicant for admission,” defined as an “alien present in the
4 United States who has not been admitted” or “who arrives in the United States.” 8
5 U.S.C. § 1225(a)(1). “[A]pplicants for admission fall into one of two categories, those
6 covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings v. Rodriguez*,
7 583 U.S. 281, 287 (2018).

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

20 **IV. ARGUMENT**

21 **A. Petitioner’s Claim is Barred Under 8 U.S.C. § 1252(g).**

22 Respondents contend that judicial review over Petitioner’s claim is barred by 28
23 U.S.C. § 1252(g), which states that “[n]o court shall have jurisdiction to hear any cause
24 or claim by or on behalf of any alien arising from the decision or action by the Attorney
25 General to commence proceedings, adjudicate cases, or execute removal orders.”
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1 Here, Petitioner’s claims of unlawful detention necessarily arise from the
2 Department of Homeland Security’s³ decision to commence removal proceedings
3 against her 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 2 (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 petition.

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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 **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.⁴

5 **1. Petitioner is mandatorily detained under 8 U.S.C. § 1225(b)(1).**

6 Petitioner’s claim fails because she is subject to mandatory detention under 8
7 U.S.C. § 1225(b)(1). Under 8 U.S.C. § 1225(a)(1), an “applicant for admission” is
8 defined as an “alien present in the United States who has not been admitted or who
9 arrives in the United States.” As explained above, applicants for admission “fall into
10 one of two categories, those covered by § 1225(b)(1) and those covered by §
11 1225(b)(2).” *Jennings*, 583 U.S. at 287. Section 1225(b)(1) – the provision relevant
12 here – applies because Petitioner was found in the United States without proper
13 documents authorizing his presence. And that statute mandates detention when an
14 immigration officer determines that the alien has a credible fear of persecution. *See* 8
15 U.S.C. § 1225(b)(1)(B)(ii) (“If the officer determines at the time of the interview that
16 [the] alien has a credible fear of persecution . . . , the alien *shall be detained* for further
17 consideration of the application for asylum.”) (emphasis added); *see also Matter of M-*
18 *S*, 27 I. & N. Dec. 509, 519 (AG 2019) (“all aliens transferred from expedited to full
19 [removal] proceedings after establishing a credible fear are ineligible for bond”).

20 Petitioner requests that the Court order her released from ICE custody. But the
21 Supreme Court has rejected such contention, explaining: “Read most naturally,
22 §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until
23 certain proceedings have concluded. . . . Nothing in the statutory text imposes any limit
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25 _____
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. 2,
Respondents respectfully request an opportunity to supplement this response.

1 on the length of detention. And neither § 1225(b)(1) nor § 1225(b)(2) says anything
2 whatsoever about bond hearings.” *Jennings*, 583 U.S. at 297. Except for temporary
3 parole granted at the discretion of the Attorney General “for urgent humanitarian
4 reasons or significant public benefit” under 8 U.S.C. § 1182(d)(5), “there are no *other*
5 circumstances under which aliens detained under § 1225(b) may be released.” *Id.* at 300
6 (emphasis in original).

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

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

16 In *Jennings*, the Supreme Court evaluated the proper interpretation of 8 U.S.C.
17 § 1225(b). The Supreme Court stated that, “[r]ead most naturally, [8 U.S.C.]
18 §§ 1225(b)(1) and (b)(2) . . . mandate detention of applicants for admission until certain
19 proceedings have concluded.” *Id.* at 297. In other words, neither 8 U.S.C. § 1225(b)(1)
20 nor § 1225(b)(2) “impose[] any limit on the length of detention” and “neither
21 § 1225(b)(1) nor § 1225(b)(2) say[] anything whatsoever about bond hearings.” *Id.* The
22 Supreme Court added that the sole means of release for noncitizens detained pursuant
23 to 8 U.S.C. §§ 1225(b)(1) or (b)(2) prior to removal from the United States is temporary
24 parole at the discretion of the Attorney General under 8 U.S.C. § 1182(d)(5). *Id.* at 300
25 (“That express exception to detention implies that there are no *other* circumstances
26 under which aliens detained under [8 U.S.C.] § 1225(b) may be released.”) (emphasis
27 in original). “In sum, [8 U.S.C.] §§ 1225(b)(1) and (b)(2) mandate detention of aliens
28 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 inadmissible
11 arriving noncitizens seeking initial entry into the United States. The Supreme Court
12 stated that such individuals have no due process rights “other than those afforded by
13 statute.” *Id.* at 107; *see also id.* at 140 (“[A]n alien in respondent’s position has only
14 those rights regarding admission that Congress has provided by statute.”). The
15 Supreme Court noted that its determination was supported by “more than a century of
16 precedent.” *Id.* at 138 (citing *Nishimura Ekiu v. United States*, 142 U.S. 651, 660
17 (1892); *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950); *Mezei*, 345 U.S.
18 at 212; *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)). Because the only process due
19 Petitioner is that afforded under section 1225(b), the Court must reject his claim that
20 his detention violates the Fifth Amendment’s Due Process Clause and deny his
21 requested relief. *See Thuraissigiam*, 591 U.S. at 138–40; *Mendoza-Linares v. Garland*,
22 51 F.4th 1146, 1167 (9th Cir. 2022) (“*Thuraissigiam* reaffirmed that ‘an alien seeking
23 initial admission to the United States requests a privilege and *has no constitutional*
24 *rights regarding his application*,’ meaning that such an alien ‘has only those rights
25 regarding admission that Congress has provided by statute.’”) (emphases in original);
26 *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (“The recognized
27 liberty interests of U.S. citizens and aliens are not coextensive: the Supreme Court has
28 ‘firmly and repeatedly endorsed the proposition that Congress may make rules as to

1 aliens that would be unacceptable if applied to citizens.”) (quoting *Demore v. Kim*,
2 538 U.S. 510, 522 (2003)); *Zelaya-Gonzalez*, 2023 WL 3103811, at *4 (“Binding Ninth
3 Circuit and Supreme Court precedents are clear that Petitioner lacks any rights beyond
4 those conferred by statute, and no statute entitles Petitioner to a bond hearing.”).

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

10 The answer is no. See *Gevorg v. Warden of Golden State Annex Detention*
11 *Facility*, 1:25-cv-00992-HBK (HC), 2025 WL 3496436, at *8 (E.D. Cal. Dec. 5, 2025)
12 (“To find Petitioner—an arriving asylum seeker who had not yet been admitted to the
13 United States and has an asylum application pending—is entitled to a bond hearing
14 solely based on the length of his detention would render § 1225(b)(1) meaningless and
15 disregard statutorily and constitutionally significant differences among the categories
16 of aliens seeking habeas relief.”); *Doe v. Bondi*, 1:25-cv-02712, 2025 WL 3516292, at
17 *5 (D. Colo. Nov. 4, 2025) (“[P]rocedural due process does not afford inadmissible
18 arriving aliens subject to prolonged detention a right to release or bond hearing prior
19 to the conclusion of removal proceedings.”); *Romero v. Bondi*, 1:25-cv-993, 2025 WL
20 2490659, at *3 (E.D. Va. July 2, 2025); *Mendoza-Linares v. Garland*, No. 21-cv-1169-
21 BEN (AHG), 2024 WL 3316306, *2 (S.D. Cal. June 10, 2024) (“[T]he Court finds that
22 Petitioner has no Fifth Amendment right to a bond hearing pending his removal
23 proceedings.”); *Zelaya-Gonzalez*, 2023 WL 3103811, at *3 (S.D. Cal. Apr. 25, 2023)
24 (same); *Rodriguez Figueroa v. Garland*, 535 F. Supp. 3d 122, 126–27 (W.D.N.Y.
25 2021); *Gonzales Garcia v. Rosen*, 513 F. Supp. 3d 329, 336 (W.D.N.Y. 2021); *St.*
26 *Charles v. Barr*, 514 F. Supp. 3d 570, 579 (W.D.N.Y. 2021); *Petgrave v. Aleman*, 529

1 F. Supp. 3d 665, 667 (S.D. Tex. 2021); *Poonjani v. Shanahan*, 319 F. Supp. 3d 664,
2 650 (S.D.N.Y. 2018) (same).⁵

3 Indeed, in *Jennings*, the Supreme Court plainly held that, “[i]n sum, §§
4 1225(b)(1) and (b)(2) *mandate* detention of aliens throughout the completion of
5 applicable proceedings and not just until the moment those proceedings begin[.]” 583
6 U.S. at 845 (emphasis added), stressing that the language of Sections 1225(b)(1) and
7 (b)(2) “*is quite clear.*” *Id.* at 846 (emphases added).

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

23 Here, Petitioner’s current detention does not fall within the range these courts
24 have found to be unreasonable. Moreover, the length of Petitioner’s detention, by itself,
25 does not favor granting habeas relief. *See Sadeqi v. LaRose*, No. 25-cv-2587-RSH-
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27
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 BJW, 2025 WL 3154520, at *3 (S.D. Cal. Nov. 12, 2025) (“The Court agrees with
2 Respondents that the length of Petitioner’s detention to date—almost 12 months—does
3 not by itself, without more, establish prolonged detention in violation of due process.”).

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

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

24 If this Court were to grant a bond hearing based solely on Petitioner’s length in
25 mandatory detention and her pending appeal to BIA, this would create a precedent
26 where every similarly situated alien simply waits for an adverse ruling from an
27 Immigration Judge, appeal the decision to BIA, and request immediate release after six
28 months while their appeal remains pending. This cannot be the rule for such an

1 unremarkable and common scenario Petitioner is in as an applicant for admission who
2 is mandatorily detained under 1225(b)(1). Such a rule is at odds with binding “Ninth
3 Circuit and Supreme Court precedent[.]” *See Zelaya-Gonzalez*, 2023 WL 3103811, at
4 *3-4; *see also Gevorg*, 2025 WL 3496436, at *8.

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

14 V. CONCLUSION

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

17
18 Dated: April 21, 2026

Respectfully submitted,

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22 ANTONIO ESTRADA
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