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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SERGEI SILAKOV,

Petitioner,

v.

CHRISTOPHER LAROSE, Warden,
Otay Mesa Detention Center,

Respondent.

Case No.: 26-cv-02301-CAB-BLM

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

I. INTRODUCTION

Petitioner requests the Court to order his immediate release from Immigration and Customs Enforcement (ICE). As an arriving alien and applicant for admission, however, Petitioner's detention is mandated by 8 U.S.C. § 1225(b)(2) until the conclusion of his removal proceedings. Accordingly, the Court should deny Petitioner's requests for relief.

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a native and citizen of Russia. Petitioner has repeatedly left the United States for Mexico and returns to the port of entry without legal documentation

1 to re-enter. On October 12, 2021, May 16, 2024, and February 19, 2026, Petitioner
2 applied for admission to the United States at a port of entry. *See* Exhibit 1.¹ Each time,
3 he did not possess legal documentation to be in or enter the United States. *See id.* The
4 first two times Petitioner entered the United States, he was issued a Notice to Appear
5 (NTA) as an arriving alien inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I), and
6 paroled into the country. *See id.* Upon Petitioner's third entry, he was again determined
7 to be an arriving alien inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I) and taken into
8 Immigration and Customs Enforcement (ICE) custody pursuant to 8 U.S.C. § 1225(b).
9 *See id.* The first NTA issued to Petitioner in October 2021 initiated removal
10 proceedings, pursuant to 8 U.S.C. § 1229a, against Petitioner, and those proceedings
11 remain ongoing. *See* Exhibit 2. Approximately two years ago, Petitioner applied for
12 asylum relief from removal under 8 U.S.C. § 1158. His asylum application is still
13 pending.

14 After Petitioner's re-entry on February 19, 2026, a master calendar hearing was
15 scheduled for April 16, 2026. That hearing was continued to April 23, 2026, after
16 Petitioner's counsel failed to appear. On April 23, 2026, Petitioner's hearing was reset
17 for evidence, therefore Petitioner's removal proceedings remain pending. As a result,
18 there is no administratively final order of removal at this time. Petitioner remains
19 mandatorily detained under 8 U.S.C. § 1225(b)(2)(A).

20 III. STATUTORY BACKGROUND

21 Section 235 of the Immigration and Nationality Act (INA), codified at 8 U.S.C.
22 § 1225, applies to an "applicant for admission," defined as an "alien present in the
23 United States who has not been admitted" or "who arrives in the United States." 8
24 U.S.C. § 1225(a)(1). "[A]pplicants for admission fall into one of two categories, those
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26

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

1 covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings v. Rodriguez*,
2 583 U.S. 281, 287 (2018).

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

15 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*,
16 583 U.S. at 287. It “applies to all applicants for admission not covered by §
17 1225(b)(1).” *Id.* Under § 1225(b)(2), an alien “who is an applicant for admission” shall
18 be detained for a removal proceeding “if the examining immigration officer determines
19 that [the] alien seeking admission is not clearly and beyond a doubt entitled to be
20 admitted.” 8 U.S.C. § 1225(b)(2)(A); *Matter of Q. Li*, 29 I&N Dec. 66, 68 (BIA 2025)
21 (“for aliens arriving in and seeking admission into the United States who are placed
22 directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. §
23 1225(b)(2)(A), mandates detention ‘until removal proceedings have concluded.’”) (citing *Jennings*, 583 U.S. at 299). However, DHS has the sole discretionary authority
24 to temporarily release on parole “any alien applying for admission to the United States”
25 on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.”
26 *Id.* § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

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1 IV. ARGUMENT

2 Petitioner's habeas petition should be denied because 28 U.S.C. § 1252(g) bars
3 judicial review over his claim, and because he is lawfully detained under the INA and
4 the Constitution.

5 A. Petitioner's Claim is Barred Under 8 U.S.C. § 1252(g).

6 Respondents contend that judicial review over Petitioner's claim is barred by 28
7 U.S.C. § 1252(g), which states that "[n]o court shall have jurisdiction to hear any cause
8 or claim by or on behalf of any alien arising from the decision or action by the Attorney
9 General to commence proceedings, adjudicate cases, or execute removal orders."

10 Here, Petitioner's claims of unlawful detention necessarily arise from the
11 Department of Homeland Security's² decision to commence removal proceedings
12 against him because that decision unavoidably triggers mandatory detention under 8
13 U.S.C. § 1225(b)(2) until the conclusion of his removal proceedings. *See, e.g., Wang v.*
14 *United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at *6 (C.D. Cal. Aug.
15 18, 2010) (finding section 1252(g) bars judicial review of false imprisonment claim
16 because the plaintiff's detention arose from the decision to commence removal
17 proceedings, and in turn, the "statute mandating detention during removal proceedings
18 of a person charged as an 'arriving alien.'").

19 As explained by another district court, removal proceedings are commenced
20 when, as occurred here, "the alien is issued a Notice to Appear before an immigration
21 court." *Herrera-Correra v. United States*, No. CV 08-2941 DSF (JCx), 2008 WL
22 11336833, at *3 (C.D. Cal. Sept. 11, 2008); *see also* Exhibit 6 (Notice to Appear). The
23 government "may arrest the alien against whom proceedings are commenced and detain
24 that individual until the conclusion of those proceedings." *Herrera-Correra*, 2008 WL
25 11336833, at *3. "Thus, an alien's detention throughout this process arises from the

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27 ² "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 [government's] decision to commence proceedings" and review of claims arising from
2 such detention is barred under section 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d
3 947, 949 (9th Cir. 2007)); *see also Wang*, 2010 WL 11463156, at *6.

4 Because this habeas petition brings a claim "arising from the decision or action
5 by the [government] to commence proceedings," review of Petitioner's claim is barred
6 under 8 U.S.C. § 1252(g). Thus, the Court must dismiss the petition.

7 **B. Petitioner is Lawfully Detained Under the INA and the Constitution.**

8 Even if the Court assumed jurisdiction to review Petitioner's claim, the Court
9 must deny his habeas petition because Petitioner's detention is statutorily mandated
10 under 8 U.S.C. § 1225(b)(2)(A).

11 **1. Petitioner is mandatorily detained under 8 U.S.C. § 1225(b)(2).**

12 Petitioner's claim fails because he is subject to mandatory detention under 8
13 U.S.C. § 1225(b)(2). Under 8 U.S.C. § 1225(a)(1), an "applicant for admission" is
14 defined as an "alien present in the United States who has not been admitted or who
15 arrives in the United States." As explained above, applicants for admission "fall into
16 one of two categories, those covered by § 1225(b)(1) and those covered by §
17 1225(b)(2)." *Jennings*, 583 U.S. at 287.

18 Section 1225(b)(2)(A) requires mandatory detention of "an alien who is *an*
19 *applicant for admission*, if the examining immigration officer determines that an alien
20 seeking admission is not clearly and beyond a doubt entitled to be admitted[.]" *Chavez*
21 *v. Noem*, No. 3:25-cv-02325, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24, 2025)
22 (quoting 8 U.S.C. § 1225(b)(2)(A)) (emphasis in original). To the extent Petitioner
23 contends that he is entitled to a bond hearing, the Supreme Court has rejected such
24 contention, explaining: "Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate
25 detention of applicants for admission until certain proceedings have concluded. . . .
26 Nothing in the statutory text imposes any limit on the length of detention. And neither
27 § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings."
28 *Jennings*, 583 U.S. at 297. Except for temporary parole granted at the discretion of the

1 Attorney General “for urgent humanitarian reasons or significant public benefit” under
2 8 U.S.C. § 1182(d)(5), “there are no *other* circumstances under which aliens detained
3 under § 1225(b) may be released.” *Id.* at 300 (emphasis in original).

4 Since Petitioner’s removal proceedings have been pending, and he has violated
5 his temporary parole twice, section 1225(b)(2) mandates his detention until the
6 proceedings have concluded. *Jennings*, 583 U.S. at 297 (“Once those proceedings end,
7 detention under § 1225(b) must end as well.”). Because Petitioner is lawfully detained
8 under section 1225(b)(2) and the statute does not entitle him to a bond hearing at this
9 time, his petition must be denied. *See, e.g., Zelaya-Gonzalez v. Matuszewski*, No. 23-
10 CV-151 JLS-KSC, 2023 WL 3103811, at *3 (S.D. Cal. April 25, 2023) (applying
11 *Jennings* to find that the petitioner had no right to release or a bond hearing).

12 **2. Petitioner’s detention does not violate due process.**

13 In *Jennings*, the Supreme Court evaluated the proper interpretation of 8 U.S.C.
14 § 1225(b). The Supreme Court stated that, “[r]ead most naturally, [8 U.S.C.]
15 §§ 1225(b)(1) and (b)(2) . . . mandate detention of applicants for admission until certain
16 proceedings have concluded.” *Id.* at 297. In other words, neither 8 U.S.C. § 1225(b)(1)
17 nor § 1225(b)(2) “impose[] any limit on the length of detention” and “neither
18 § 1225(b)(1) nor § 1225(b)(2) say[] anything whatsoever about bond hearings.” *Id.* The
19 Supreme Court added that the sole means of release for noncitizens detained pursuant
20 to 8 U.S.C. §§ 1225(b)(1) or (b)(2) prior to removal from the United States is temporary
21 parole at the discretion of the Attorney General under 8 U.S.C. § 1182(d)(5). *Id.* at 300
22 (“That express exception to detention implies that there are no *other* circumstances
23 under which aliens detained under [8 U.S.C.] § 1225(b) may be released.”) (emphasis
24 in original). “In sum, [8 U.S.C.] §§ 1225(b)(1) and (b)(2) mandate detention of aliens
25 throughout the completion of applicable proceedings[.]” *Id.* at 302.

26 In *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 207–09 (1953), a
27 noncitizen in exclusion proceedings filed a habeas petition claiming that his prolonged
28 detention without a hearing violated his constitutional rights. The Supreme Court

1 rejected the petition, concluding that the noncitizen's continued detention did not
2 deprive him of any due process rights, stating: "[A]n alien on the threshold of initial
3 entry stands on a different footing: 'Whatever the procedure authorized by Congress
4 is, it is due process as far as an alien denied entry is concerned.'" *Id.* at 212 (citation
5 omitted).

6 In *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 138–40
7 (2020), the Supreme Court once again addressed the due process rights of individuals
8 like Petitioner—inadmissible arriving noncitizens seeking initial entry into the United
9 States. The Supreme Court stated that such individuals have no due process rights
10 "other than those afforded by statute." *Id.* at 107; *see also id.* at 140 ("[A]n alien in
11 respondent's position has only those rights regarding admission that Congress has
12 provided by statute."). The Supreme Court noted that its determination was supported
13 by "more than a century of precedent." *Id.* at 138 (citing *Nishimura Ekiu v. United*
14 *States*, 142 U.S. 651, 660 (1892); *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537,
15 544 (1950); *Mezei*, 345 U.S. at 212; *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)).
16 Because the only process due to Petitioner is that afforded under section 1225(b), the
17 Court must reject his claim that his detention violates the Fifth Amendment's Due
18 Process Clause and deny her requested relief. *See Thuraissigiam*, 591 U.S. at 138–40;
19 *Mendoza-Linares*, 51 F.4th at 1167; *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206
20 (9th Cir. 2022) ("The recognized liberty interests of U.S. citizens and aliens are not
21 coextensive: the Supreme Court has 'firmly and repeatedly endorsed the proposition
22 that Congress may make rules as to aliens that would be unacceptable if applied to
23 citizens.'") (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)); *Zelaya-Gonzalez*,
24 2023 WL 3103811, at *4 ("Binding Ninth Circuit and Supreme Court precedents are
25 clear that Petitioner lacks any rights beyond those conferred by statute, and no statute
26 entitles Petitioner to a bond hearing.").

27 Since the Supreme Court's decision in *Thuraissigiam*, numerous published
28 decisions have acknowledged *Thuraissigiam*'s impact on the precise Fifth Amendment

1 Due Process Clause that Petitioner might have raised in this petition: Does an alien
2 detained under 8 U.S.C. § 1225(b)(1) have a due process right to release or a bond
3 hearing after being detained for a certain period of time? The answer is no. *See*
4 *Mendoza-Linares v. Garland*, No. 21-cv-1169-BEN (AHG), 2024 WL 3316306, *2
5 (S.D. Cal. June 10, 2024) (“[T]he Court finds that Petitioner has no Fifth Amendment
6 right to a bond hearing pending his removal proceedings.”); *Zelaya-Gonzalez*, 2023
7 WL 3103811. *3 (S.D. Cal. Apr. 25, 2023) (same); *Rodriguez Figueroa v. Garland*,
8 535 F. Supp. 3d 122, 126–27 (W.D.N.Y. 2021); *Gonzales Garcia v. Rosen*, 513 F.
9 Supp. 3d 329, 336 (W.D.N.Y. 2021); *St. Charles v. Barr*, 514 F. Supp. 3d 570, 579
10 (W.D.N.Y. 2021); *Petgrave v. Aleman*, 529 F. Supp. 3d 665, 667 (S.D. Tex. 2021).

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

22 In similar cases, courts in this district have applied the test in *Lopez v. Garland*,
23 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022). *See, e.g., Sanchez-Rivera*, 2023 WL 139801,
24 at *5 (“[W]hile the *Mathews [v. Eldridge]*, 424 U.S. 319 (1976)] factors may be well-
25 suited to determining whether due process requires a second bond hearing, they are not
26 particularly dispositive of whether prolonged mandatory detention has become
27 unreasonable in a particular case.”); *D.D. v. LaRose, et al.*, Case No. 25-cv-02581-BJC-
28 JLB, ECF No. 10 at 7 (S.D. Cal. Oct. 22, 2025) (considering a similar claim and finding

1 “the three-factor balancing test from *Lopez* . . . provides an appropriate assessment of
2 the possible constitutional implications of Petitioner’s ongoing detention without
3 process.”).

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

8 Here, Petitioner has only been detained for approximately two months. Courts
9 in this district have found detention for much longer periods to be unreasonably
10 prolonged. *See Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS, 2024 WL 711607 at
11 *5 (S.D. Cal. Feb. 21, 2024) (32 months); *Sibomana*, 2023 WL 3028093, at *4 (19
12 months); *Sanchez-Rivera*, 2023 WL 139801 at *6 (three years); *Kydyrali v. Wolf*, 499
13 F. Supp. 3d 768, 773 (S.D. Cal. 2020) (27 months); *Yagao*, 2019 WL 1429582, at *1
14 (42 months). The length of detention “is the most important factor.” *Sanchez-Rivera*,
15 2023 WL 139801, at *6 (citation omitted). And Petitioner’s current detention does not
16 fall within the range those courts have found to be unreasonable. Moreover, the length
17 of Petitioner’s detention, by itself, does not favor granting habeas relief. *See Sadeqi v.*
18 *LaRose*, No. 25-cv-2587-RSH-BJW, 2025 WL 3154520, at *3 (S.D. Cal. Nov. 12,
19 2025) (“The Court agrees with Respondents that the length of Petitioner’s detention to
20 date—almost 12 months—does not by itself, without more, establish prolonged
21 detention in violation of due process.”). Not only does the length of Petitioner’s
22 detention fall comparatively short of the length courts in this district have found to
23 warrant habeas relief, but the other *Lopez* factors do not favor habeas relief either. Next,
24 the likely duration of future detention weighs against Petitioner. This is the third time
25 Petitioner has left the U.S. for Mexico and returned to a U.S. port of entry. *See Exhibit*
26 *1*. Petitioner was paroled into the country the first two times he entered without legal
27 documentation. *See id.* Petitioner’s October 2021 NTA remains the operative charging
28 document for his removal proceedings. *See Exhibit 2*. Since Petitioner’s detention, his

individual merits hearing has been ongoing. On April 16, 2026, Petitioner's counsel failed to appear. On April 23, 2026, the immigration court set an evidentiary hearing. Petitioner's path to release or removal should be clear once the immigration judge makes a decision on the merits. Finally, there is no indication of any delay in the removal proceedings on the part 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 Petitioner's release.

Petitioner was lawfully detained when he applied for admission to the United States on February 19, 2026. As a result, Petitioner is rightly considered an applicant for admission, and his 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, Respondent respectfully requests that the Court dismiss this petition for lack of jurisdiction or deny it on the merits.

Dated: April 24, 2026

Respectfully submitted,

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