

1 ADAM GORDON
United States Attorney
2 ANTONIO ESTRADA
Special Assistant United States Attorney
3 California Bar No. 321247
Office of the U.S. Attorney
4 880 Front Street, Room 6293
San Diego, CA 92101-8893
5 Telephone: (619) 546-7462
Email: Antonio.Estrada@usdoj.gov

6 Attorneys for Respondents

7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 BALEWA RANDOLF KWALAR,

12 Petitioner,

13
14 v.

15 WARDEN, Otay Mesa Detention
16 Center, et al.,

17 Respondents.
18

No.: 26-cv-02447-JES-BLM

19
20
21 RETURN TO PETITION FOR WRIT
OF HABEAS CORPUS

22 I. INTRODUCTION

23 *Pro se* Petitioner requests that the Court order his release or Respondents to
24 provide him a bond hearing. *See* ECF No. 1, at 7. This Court lacks jurisdiction because
25 Petitioner's claims are barred by 8 U.S.C. § 1252(g). Moreover, as an applicant for
26 admission to the United States found to have a credible fear of persecution, Petitioner's
27 detention is mandated by 8 U.S.C. § 1225(b)(1)(B)(ii) until the conclusion of his
28

1 removal proceedings. Accordingly, the Court should deny Petitioner's request for
2 relief.

3 II. FACTUAL AND PROCEDURAL BACKGROUND

4 Petitioner is a native and citizen of Cameron. *See* Exhibit 1 (Notice to Appear
5 with Attached Credible Fear Interview).¹ On December 26, 2025, Petitioner was
6 detained by U.S. Customs and Border Protection while attempting to unlawfully enter
7 the United States. *See id.*; *see also* Exhibit 2 (I-213). At that time, he did not have any
8 valid entry documents to enter the United States and was not then admitted or paroled
9 into the United States. *See* Exhibit 1. He was determined to be inadmissible under
10 U.S.C. § 1182(a)(7)(A)(i)(I), placed in expedited removal proceedings pursuant to
11 U.S.C. § 1225(b)(1), and taken into Immigration and Customs Enforcement (ICE)
12 custody pursuant to 8 U.S.C. § 1225(b)(1)(B). *See id.*

13 While in the custody of U.S. Customs and Border Patrol, Petitioner manifested a
14 fear of return, persecution, and/or torture if returned to Iran, so he was referred for a
15 Credible Fear Interview (CFI) in which an U.S. Citizenship and Immigration Services
16 (USCIS) Asylum Officer interviewed Petitioner and concluded he established that he
17 would be tortured in Iran. *See* Exhibit 1. On January 6, 2026, after receiving a positive
18 credible fear determination by an asylum officer pursuant to 8 U.S.C. § 1225(b)(1)(B),
19 Petitioner was issued a Notice to Appear (NTA). *See id.* The filing of the NTA initiated
20 removal proceedings, pursuant to 8 U.S.C. § 1229a, against Petitioner. Those removal
21 proceedings remain ongoing.

22 Petitioner's initial master calendar hearing was held on January 15, 2026. *See*
23 Exhibit 3 (Department of Justice – Executive Office of Immigration Review Printout)
24 at 6. On January 30, 2026, Petitioner filed his application for asylum under 8 U.S.C.
25 § 1158, withholding of removal under 8 U.S.C. § 1231(b)(3), and relief under the
26

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

1 Convention Against Torture (I589 application). *See id.* On February 4, 2026, the
2 Department filed a motion to pretermite Petitioner's I589 application based on an
3 Asylum Cooperation Agreement with Uganda. *See* Exhibit 4 (IJ Removal Order). The
4 IJ granted the Department's motion to pretermite and ordered Petitioner removed to
5 Uganda. *See id.* Petitioner timely filed an appeal of his removal order to the Board of
6 Immigration Appeals (BIA). *See* Exhibit 5 (BIA Receipt). Petitioner's appeal remains
7 pending with the BIA. *See* Exhibit 3 at 8. While his proceedings remain ongoing,
8 Petitioner remains mandatorily detained at the Otay Mesa Detention Center under
9 U.S.C. § 1225(b)(1)(B).² As of today, Petitioner has been detained for less than four
10 months.

11 III. STATUTORY BACKGROUND

12 Section 235 of the Immigration and Nationality Act (INA), codified at 8 U.S.C.
13 § 1225, applies to an "applicant for admission," defined as an "alien present in the
14 United States who has not been admitted" or "who arrives in the United States." 8
15 U.S.C. § 1225(a)(1). "[A]pplicants for admission fall into one of two categories, those
16 covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings v. Rodriguez*,
17 583 U.S. 281, 287 (2018).

18 Section 1225(b)(1) applies to arriving aliens and "certain other" aliens "initially
19 determined to be inadmissible due to fraud, misrepresentation, or lack of valid
20 document." *Id.* (citing 8 U.S.C. § 1225(b)(1)(A)(i)). These aliens are generally subject
21 to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if "the alien
22 indicates an intention to apply for asylum . . . or a fear of persecution," immigration
23 officers will refer the alien for a credible fear interview. 8 U.S.C. § 1225(b)(1)(A)(ii).
24 "If the officer determines at the time of the interview that [the] alien has a credible fear
25 of persecution . . . , the alien *shall be detained* for further consideration of the
26 application for asylum." 8 U.S.C. § 1225(b)(1)(B)(ii) (emphasis added). If the alien
27

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

1 does not indicate an intent to apply for asylum, does not express a fear of persecution,
 2 or is “found not to have such a fear,” they “shall be detained . . . until removed” from
 3 the United States. 8 U.S.C. §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

4 IV. ARGUMENT

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’s³ decision to commence removal proceedings
 12 against him because that decision unavoidably triggers mandatory detention under 8
 13 U.S.C. § 1225(b)(1)(B)(ii) until the conclusion of his removal proceedings. *See, e.g.,*
 14 *Wang v. United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at *6 (C.D.
 15 Cal. Aug. 18, 2010) (finding section 1252(g) bars judicial review of false imprisonment
 16 claim 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 1 (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
 26

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 [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)(1)(B)(ii) and has not been unconstitutionally prolonged.⁴

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

12 Petitioner's claim fails because he is subject to mandatory detention under 8
 13 U.S.C. § 1225(b)(1). 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. Section 1225(b)(1) – the provision relevant
 18 here – applies because Petitioner was found in the United States without proper
 19 documents authorizing his presence. And that statute mandates detention when an
 20 immigration officer determines that the alien has a credible fear of persecution. *See* 8
 21 U.S.C. § 1225(b)(1)(B)(ii) ("If the officer determines at the time of the interview that
 22 [the] alien has a credible fear of persecution . . . , the alien *shall be detained* for further
 23 consideration of the application for asylum.") (emphasis added); *see also Matter of M-*

24
 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 S, 27 I. & N. Dec. 509, 519 (AG 2019) (“all aliens transferred from expedited to full
2 [removal] proceedings after establishing a credible fear are ineligible for bond”).

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

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

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

22 In *Jennings*, the Supreme Court evaluated the proper interpretation of 8 U.S.C.
23 § 1225(b). The Supreme Court stated that, “[r]ead most naturally, [8 U.S.C.]
24 §§ 1225(b)(1) and (b)(2) . . . mandate detention of applicants for admission until certain
25 proceedings have concluded.” *Id.* at 297. In other words, neither 8 U.S.C. § 1225(b)(1)
26 nor § 1225(b)(2) “impose[] any limit on the length of detention” and “neither
27 § 1225(b)(1) nor § 1225(b)(2) say[] anything whatsoever about bond hearings.” *Id.* The
28 Supreme Court added that the sole means of release for noncitizens detained pursuant

1 to 8 U.S.C. §§ 1225(b)(1) or (b)(2) prior to removal from the United States is temporary
2 parole at the discretion of the Attorney General under 8 U.S.C. § 1182(d)(5). *Id.* at 300
3 (“That express exception to detention implies that there are no *other* circumstances
4 under which aliens detained under [8 U.S.C.] § 1225(b) may be released.”) (emphasis
5 in original). “In sum, [8 U.S.C.] §§ 1225(b)(1) and (b)(2) mandate detention of aliens
6 throughout the completion of applicable proceedings[.]” *Id.* at 302.

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

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

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

11 Since the Supreme Court’s decision in *Thuraissigiam*, numerous courts have
 12 acknowledged *Thuraissigiam*’s impact on the precise Fifth Amendment Due Process
 13 Clause that Petitioner might have raised in this petition: Does an alien detained under
 14 8 U.S.C. § 1225(b)(1) have a due process right to release or a bond hearing after being
 15 detained for a certain period of time?

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

proceedings.”); *Zelaya-Gonzalez*, 2023 WL 3103811, at *3 (S.D. Cal. Apr. 25, 2023) (same); *Rodriguez Figueroa v. Garland*, 535 F. Supp. 3d 122, 126–27 (W.D.N.Y. 2021); *Gonzales Garcia v. Rosen*, 513 F. Supp. 3d 329, 336 (W.D.N.Y. 2021); *St. Charles v. Barr*, 514 F. Supp. 3d 570, 579 (W.D.N.Y. 2021); *Petgrave v. Aleman*, 529 F. Supp. 3d 665, 667 (S.D. Tex. 2021); *Poonjani v. Shanahan*, 319 F. Supp. 3d 664, 650 (S.D.N.Y. 2018) (same).⁵

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

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

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

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 JLB, ECF No. 10 at 7 (S.D. Cal. Oct. 22, 2025) (considering a similar claim and finding
2 “the three-factor balancing test from *Lopez* . . . provides an appropriate assessment of
3 the possible constitutional implications of Petitioner’s ongoing detention without
4 process.”).

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

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

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

23 A recent case within this district, *Markov v. Larose*, is instructive. 25-CV-3811
24 JLS (SBC), 2026 WL 92069 (S.D. Cal. January 13, 2026). There, the Petitioner had
25 been detained under 8 U.S.C. § 1225 for “almost exactly one-year” without a bond
26 hearing. *Id.* at *2. Although he alleged that his final merits hearing had been postponed
27 “five times due to the government,” and there was “no merits hearing scheduled,” the
28 court nonetheless denied the petition. *Id.* at *2. In doing so, it reasoned that the mere

1 “length of detention, *without more*, does not render his detention unreasonable.” *Id.*
2 (emphasis added).

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

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

27 **Likely Duration of Future Detention.** Petitioner has already been ordered
28 removed by an IJ and Petitioner’s appeal of this removal order is currently pending

1 before the BIA. Critically, “unlike aliens detained under 8 U.S.C. § 1231 whose
2 detention could be ‘indefinite’ and ‘potentially permanent,’ aliens detained under §
3 1225(b) face a definite termination point.” *See Gevorg*, 2025 WL 3496436, at *7.

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

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

17 **Delays caused by Petitioner or Government.** This final factor also weighs
18 against Petitioner. Between his initial unlawful entry and the IJ adjudicating his removal
19 proceedings, Petitioner has only been detained for less than four months. Petitioner does
20 not allege anywhere in his Petition or accompanying exhibits that the U.S. Department
21 of Homeland Security has sought any continuances or otherwise delayed his
22 immigration proceedings. *See generally* ECF No. 1. The delay factor therefore weighs
23 against Petitioner. *See Demore v. Kim*, 538 U.S. at 530-31 (“Respondent was detained
24 for somewhat longer than the average...but respondent himself had requested a
25 continuance of his removal hearing.”); *Doe v. Andrews*, 2025 WL 3280777, at *11
26 (“While Petitioner certainly has the right to pursue all available avenues to combat his
27 removal, post-*Jennings*, he does not have the right to parlay the resulting delay into a
28 bond hearing.”) (citation omitted).

1 If this court were to grant a bond hearing based solely on Petitioner's mandatory
2 detention for less than four months—without requiring more (i.e., foot-dragging or
3 bad-faith by DHS)—this would create a precedent where every similarly situated alien
4 simply prolongs out their immigration proceeding with continuances and appeals to
5 only request immediate release after only four months while their case remains
6 pending.

7 This cannot be the rule for such an unremarkable and common scenario
8 Petitioner is in as an applicant for admission who is mandatorily detained under
9 1225(b)(1). Such a rule is at odds with binding “Ninth Circuit and Supreme Court
10 precedent[.]” *See Zelaya-Gonzalez*, 2023 WL 3103811, at *3-4.

11 Petitioner was detained as an alien present in the United States who has not been
12 admitted or paroled. Thus, Petitioner is rightly considered an applicant for admission,
13 and his mandatory detention does not violate due process. *See Duran Romero v. LaRose*,
14 No. 25-cv-3567-AGS-VET, ECF No. 7 (S.D. Cal. Jan. 14, 2026); *Shahin v. Noem*, No.
15 25-cv-2496-AGS-KSC, ECF No. 12 (S.D. Cal. Dec. 23, 2025); *Cordova Cordova*, No.
16 25-cv-2426-BAS-DDL, ECF No. 9 (S.D. Cal. Nov. 14, 2025); *Mendez Ramirez v.*
17 *Decker*, 612 F. Supp. 3d 200, 221 (S.D.N.Y. 2020); *Gonzalez Aguilar v. Wolf*, 448 F.
18 Supp. 3d 1202, 1212 (D.N.M. 2020); *de la Rosa Espinoza v. Guadian*, Case No. 20-
19 3126-JWL, 2020 WL 3452967, at *6-8 (D. Kansas June 24, 2020).

20 V. CONCLUSION

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

23
24 Dated: April 24, 2026

Respectfully submitted,

25 ADAM GORDON
26 United States Attorney

27 s/ Antonio Estrada
28 ANTONIO ESTRADA
Special Assistant United States Attorney
Attorneys for Respondents