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

MUSA WAGGEH,

Petitioner,

v.

PATRICK DIVVER, Field Office
Director of Enforcement and Removal
Operations, San Diego Field Office,
Immigration and Customs Enforcement;
et al.,

Respondents.

Case No.: 26-cv-02498-BAS-DEB

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

I. INTRODUCTION

Petitioner requests that the Court order his release from Immigration and Customs Enforcement (ICE) custody. This Court lacks jurisdiction because Petitioner's claims are barred by 8 U.S.C. § 1252(g). Moreover, as an applicant for admission to the United States found to have a credible fear of persecution, Petitioner's detention is mandated by 8 U.S.C. § 1225(b)(1)(B)(ii) until the conclusion of his removal proceedings. Accordingly, the Court should deny Petitioner's request for relief.

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a native and citizen of Gambia, who entered the United States without inspection near the Tecate port of entry in California, on October 18, 2025. *See* Exhibit 1 (Form I-213).¹ Petitioner did not then have any valid entry documents to enter the United States. *See id.* He was determined to be inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I), placed in expedited removal proceedings pursuant to 8 U.S.C. § 1225(b)(1), and taken into Immigration and Customs Enforcement (ICE) custody pursuant to 8 U.S.C. § 1225(b)(1)(B). *See* ECF No. 1-4 at 10. On December 16, 2025, Petitioner was interviewed by an asylum officer, pursuant to 8 U.S.C. § 1225(b)(1)(B). *See id.* at 12. After receiving a positive credible fear determination, Petitioner was issued a Notice to Appear (NTA), which initiated removal proceedings against Petitioner, pursuant to 8 U.S.C. § 1229a. *See id.* Within his removal proceedings, Petitioner applied for relief from removal before an immigration judge, including asylum under 8 U.S.C. § 1158, withholding of removal under 8 U.S.C. § 1231(b)(3), and relief under the Convention Against Torture.

On January 28, 2026, the Department of Homeland Security (DHS) filed a Motion to Pretermitt (“Motion”) the Petitioner’s applications for relief because Petitioner is subject to the Asylum Cooperative Agreement (ACA) with Uganda. *See* ECF No. 1-5. On March 11, 2026, Petitioner appeared before an immigration judge for an individual merits hearing on the Motion and his applications for relief from removal. *See id.* The Immigration Judge denied the applications for relief, granted the Motion, and ordered Petitioner removed to Uganda. *Id.* On March 14, 2026, Petitioner appealed the removal order to the Board of Immigration Appeals (BIA). *See* Exhibit 2 (Receipt for Appeal). Petitioner’s appeal is still pending with the BIA. *See* Exhibit 3 (Department of Justice – Executive Office for Immigration Review Case Details). Respondents have

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

1 no record of the “Motion to Reopen” Petitioner referenced in his petition and attached
2 as “Exhibit 3” to his petition. *See* ECF No. 1-6. Notably, Petitioner’s exhibit refers to
3 Respondents inability to effectuate a removal to Guatemala. *See id.* Here, Petitioner’s
4 removal to Uganda is pending his appeal. *See* Exhibit 3. As a result, there is no
5 administratively final order of removal at this time and Petitioner remains mandatorily
6 detained under 8 U.S.C. § 1225(b)(2)(A).

7 III. STATUTORY BACKGROUND

8 Section 235 of the Immigration and Nationality Act (INA), codified at 8 U.S.C.
9 § 1225, applies to an “applicant for admission,” defined as an “alien present in the
10 United States who has not been admitted” or “who arrives in the United States.” 8
11 U.S.C. § 1225(a)(1). “[A]pplicants for admission fall into one of two categories, those
12 covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings v. Rodriguez*,
13 583 U.S. 281, 287 (2018).

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

26 IV. ARGUMENT

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

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

5 Here, Petitioner's claims of unlawful detention necessarily arise from the
6 Department of Homeland Security's² decision to commence removal proceedings
7 against him because that decision unavoidably triggers mandatory detention under 8
8 U.S.C. § 1225(b)(1)(B)(ii) until the conclusion of his removal proceedings. *See, e.g.,*
9 *Wang v. United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at *6 (C.D.
10 Cal. Aug. 18, 2010) (finding section 1252(g) bars judicial review of false imprisonment
11 claim because the plaintiff's detention arose from the decision to commence removal
12 proceedings, and in turn, the "statute mandating detention during removal proceedings
13 of a person charged as an 'arriving alien.'").

14 As explained by another district court, removal proceedings are commenced
15 when, as occurred here, "the alien is issued a Notice to Appear before an immigration
16 court." *Herrera-Correra v. United States*, No. CV 08-2941 DSF (JCx), 2008 WL
17 11336833, at *3 (C.D. Cal. Sept. 11, 2008); *see also* Exhibit 3 (Notice to Appear). The
18 government "may arrest the alien against whom proceedings are commenced and detain
19 that individual until the conclusion of those proceedings." *Herrera-Correra*, 2008 WL
20 11336833, at *3. "Thus, an alien's detention throughout this process arises from the
21 [government's] decision to commence proceedings" and review of claims arising from
22 such detention is barred under section 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d
23 947, 949 (9th Cir. 2007)); *see also Wang*, 2010 WL 11463156, at *6.

24 Because this habeas petition brings a claim "arising from the decision or action
25 by the [government] to commence proceedings," review of Petitioner's claim is barred
26

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 under 8 U.S.C § 1252(g). Thus, the Court must dismiss the petition.

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

3 Even if the Court assumed jurisdiction to review Petitioner's claim, the Court
4 must deny his habeas petition because Petitioner's detention is statutorily mandated
5 under 8 U.S.C. § 1225(b)(1)(B)(ii) and has not been unconstitutionally prolonged.

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

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

21 Petitioner requests that the Court order him released from ICE custody. But the
22 Supreme Court has rejected such contention, explaining: "Read most naturally,
23 §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until
24 certain proceedings have concluded. . . . Nothing in the statutory text imposes any limit
25 on the length of detention. And neither § 1225(b)(1) nor § 1225(b)(2) says anything
26 whatsoever about bond hearings." *Jennings*, 583 U.S. at 297. Except for temporary
27 parole granted at the discretion of the Attorney General "for urgent humanitarian
28 reasons or significant public benefit" under 8 U.S.C. § 1182(d)(5), "there are no *other*

1 circumstances under which aliens detained under § 1225(b) may be released.” *Id.* at 300
2 (emphasis in original).

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

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

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

25 In *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 207–09 (1953), a
26 noncitizen in exclusion proceedings filed a habeas petition claiming that his prolonged
27 detention without a hearing violated his constitutional rights. The Supreme Court
28 rejected the petition, concluding that the noncitizen’s continued detention did not

1 deprive him of any due process rights, stating: “[A]n alien on the threshold of initial
2 entry stands on a different footing: ‘Whatever the procedure authorized by Congress
3 is, it is due process as far as an alien denied entry is concerned.’” *Id.* at 212 (citation
4 omitted).

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

26 Since the Supreme Court’s decision in *Thuraissigiam*, numerous published
27 decisions have acknowledged *Thuraissigiam*’s impact on the precise Fifth Amendment
28 Due Process Clause that Petitioner might have raised in this petition: Does an alien

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

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

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

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 the total length of detention to date, the likely
5 duration of future detention, and the delays in the removal proceedings caused by the
6 petitioner and the government.” 631 F. Supp. 3d at 879.

7 First, Petitioner has been detained for about seven months. Courts in this district
8 have found detention for much longer periods to be unreasonably prolonged. *See*
9 *Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS, 2024 WL 711607 at *5 (S.D. Cal.
10 Feb. 21, 2024) (32 months); *Sibomana*, 2023 WL 3028093, at *4 (19 months);
11 *Sanchez-Rivera*, 2023 WL 139801 at *6 (three years); *Kydyrali v. Wolf*, 499 F. Supp.
12 3d 768, 773 (S.D. Cal. 2020) (27 months); *Yagao*, 2019 WL 1429582, at *1 (42
13 months). The length of detention “is the most important factor.” *Sanchez-Rivera*, 2023
14 WL 139801, at *6 (citation omitted). And Petitioner’s current detention does not fall
15 within the range those courts have found to be unreasonable. Moreover, the length of
16 Petitioner’s detention, by itself, does not favor granting habeas relief. *See Sadeqi v.*
17 *LaRose*, No. 25-cv-2587-RSH-BJW, 2025 WL 3154520, at *3 (S.D. Cal. Nov. 12,
18 2025) (“The Court agrees with Respondents that the length of Petitioner’s detention to
19 date—almost 12 months—does not by itself, without more, establish prolonged
20 detention in violation of due process.”). Not only does the length of Petitioner’s
21 detention fall comparatively short of the length courts in this district have found to
22 warrant habeas relief, but the other *Lopez* factors do not favor habeas relief either.
23 Second, the likely duration of future detention weighs against Petitioner. On March 11,
24 2026, an immigration judge ordered Petitioner’s removal to Uganda. *See* ECF No. 1-
25 5. Petitioner promptly filed an appeal, which is still pending with the BIA. *See* Exhibit
26 3. Moreover, the government has no record of filing a motion to reopen Petitioner’s
27 removal proceedings. *See id.* Accordingly, there is no indication of any delay in the
28 removal proceedings on the part of the government.

1 Balancing the above factors, the record does not support a finding that “detention
2 has become so unreasonable as to require an initial bond hearing,” *Sanchez-Rivera*,
3 2023 WL 139801, at *6, or an order requiring Petitioner’s release.

4 Accordingly, Petitioner is subject to mandatory detention, which does not violate
5 due process. *See Markov v. LaRose*, No. 25-CV-3811 JLS (SBC), 2026 WL 92069 (S.D.
6 Cal. Jan. 13, 2026) (“Petitioner’s length of detention, without more, does not render his
7 detention unreasonable.”); *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*, 612 F. Supp. 3d at 221; *Gonzalez Aguilar*
11 *v. Wolf*, 448 F. Supp. 3d at 1212; *de la Rosa Espinoza*, 2020 WL 3452967, at *6-8.

12 V. CONCLUSION

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

15
16 Dated: April 28, 2026

Respectfully submitted,

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