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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

TATA PATRICIA CHING WOKIEFIUWE,

Petitioner,

v.

CHRISTOPHER LaRose, et al.,

Respondents.

Case No.: 26-cv-02557-BJC-SBC

RETURN TO AMENDED PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

Petitioner has filed a second habeas petition under 28 U.S.C. § 2241. Petitioner requests that the Court order Respondents release her or to provide her a bond hearing. 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 her removal proceedings. Accordingly, the Court should deny Petitioner's request for relief.

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a native and citizen of Cameroon. *See* Exhibit 1 (Notice to Appear and Credible Fear Interview).[1] On October 17, 2024, Petitioner was detained by U.S. Customs and Border Protection while attempting to unlawfully enter the United States. *See id.* At that time, she did not have any valid entry documents to enter the United States and was not then admitted or paroled into the United States. *See id.* She 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 id* at 10. After receiving a positive credible fear determination by an asylum officer pursuant to 8 U.S.C. § 1225(b)(1)(B), Petitioner was issued a Notice to Appear (NTA). *See id.* The filing of the NTA initiated removal proceedings, pursuant to 8 U.S.C. § 1229a, against Petitioner. *See id.* Despite her belief, her removal proceedings were never consolidated with those of her husband, hence the reason she was issued her own NTA. *See generally* Exhibit 2 (Department of Justice for Immigration Review – Case Detail).

On January 30, 2026, the immigration judge (IJ) granted the Department of Homeland Security's (DHS) motion to pretermit Petitioner's application for 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. *See* Exhibit 3 (IJ Order dated January 30, 2026), and ordered Petitioner removed to Uganda. *See id.* On February 12, 2026, Petitioner timely filed an appeal of the IJs removal order to the Board of Immigration Appeals (BIA). *See* Exhibit 2 at 20. On April 10, 2026, the BIA issued a briefing schedule, giving both parties an appeal brief deadline of May 1, 2026. *See id.* Both parties timely filed

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

their appeal brief before the BIA. *See id.* Petitioner's BIA appeal remains pending. *See id.* While her proceedings remain ongoing, Petitioner remains mandatorily detained at the Otay Mesa Detention Center under 8 U.S.C. § 1225(b)(1)(B).[2]

On April 8, 2026, Petitioner filed her first habeas petition. *Wokiefiuwe v. Richmond*, 26-cv-02231-RSH-SBC, ECF No. 1. On April 10, 2026, this Court dismissed Petitioner's first habeas petition, holding that she "has not established unconstitutionally prolonged detention." *See id.*, ECF No. 2 at 2. Less than a month later, on April 22, 2026, Petitioner filed her second habeas petition. *Wokiefiuwe v. Larose*, ECF No. 1. On June 1, 2026, Petitioner filed an amended petition. *See id.*, ECF No. 10. Respondents will no address Petitioners amended petition. Based on the arguments set forth below, the Court should deny any requests for relief and dismiss the petition.

III. STATUTORY BACKGROUND

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

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

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

of persecution . . . , the alien *shall be detained* for further consideration of the application for asylum." 8 U.S.C. § 1225(b)(1)(B)(ii) (emphasis added). If the alien does not indicate an intent to apply for asylum, does not express a fear of persecution, or is "found not to have such a fear," they "shall be detained . . . until removed" from the United States. 8 U.S.C. §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

IV. ARGUMENT

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

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

Here, Petitioner's claims of unlawful detention necessarily arise from the Department of Homeland Security's[3] decision to commence removal proceedings against him because that decision unavoidably triggers mandatory detention under 8 U.S.C. § 1225(b)(1)(B)(ii) until the conclusion of his removal proceedings. *See, e.g.*, *Wang v. United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at *6 (C.D. Cal. Aug. 18, 2010) (finding section 1252(g) bars judicial review of false imprisonment claim because the plaintiff's detention arose from the decision to commence removal proceedings, and in turn, the "statute mandating detention during removal proceedings of a person charged as an 'arriving alien.'").

As explained by another district court, removal proceedings are commenced when, as occurred here, "the alien is issued a Notice to Appear before an immigration court." *Herrera-Correra v. United States*, No. CV 08–2941 DSF (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008); *see also* Exhibit 2 (Notice to Appear). The government "may arrest the alien against whom proceedings are commenced and detain

[3] "In 2002, Congress transferred the Attorney General's immigration enforcement responsibilities to the Secretary of Homeland Security." *Ibarra-Perez v. United States*, 154 F.4th 989, 995 n.2 (9th Cir. 2025).

that individual until the conclusion of those proceedings." *Herrera-Correra*, 2008 WL 11336833, at *3. "Thus, an alien's detention throughout this process arises from the [government's] decision to commence proceedings" and review of claims arising from such detention is barred under section 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)); *see also Wang*, 2010 WL 11463156, at *6.

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

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

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

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

Petitioner's claim fails because he is subject to mandatory detention under 8 U.S.C. § 1225(b)(1). Under 8 U.S.C. § 1225(a)(1), an "applicant for admission" is defined as an "alien present in the United States who has not been admitted or who arrives in the United States." As explained above, applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings*, 583 U.S. at 287. Section 1225(b)(1) – the provision relevant here – applies because Petitioner was found in the United States without proper documents authorizing her presence. And that statute mandates detention when an immigration officer determines that the alien has a credible fear of persecution. *See* 8 U.S.C. § 1225(b)(1)(B)(ii) ("If the officer determines at the time of the interview that

[4] As Petitioner is not subject to a final order of removal, *see* 8 C.F.R. § 1241.1, he is not subject to mandatory detention under 8 U.S.C. § 1231. Accordingly, an analysis under 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.

[the] alien has a credible fear of persecution . . . , the alien *shall be detained* for further consideration of the application for asylum.") (emphasis added); *see also Matter of M-S*, 27 I. & N. Dec. 509, 519 (AG 2019) ("all aliens transferred from expedited to full [removal] proceedings after establishing a credible fear are ineligible for bond").

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

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

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2. Petitioner's detention is not unconstitutionally prolonged.

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

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

In *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 138–40 (2020), the Supreme Court once again addressed the due process rights of inadmissible arriving noncitizens seeking initial entry into the United States. The Supreme Court stated that such individuals have no due process rights "other than those afforded by statute." *Id.* at 107; *see also id.* at 140 ("[A]n alien in respondent's position has only those rights regarding admission that Congress has provided by statute."). The

Supreme Court noted that its determination was supported by "more than a century of precedent." *Id.* at 138 (citing *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892); *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950); *Mezei*, 345 U.S. at 212; *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)). Because the only process due Petitioner is that afforded under section 1225(b), the Court must reject his claim that his detention violates the Fifth Amendment's Due Process Clause and deny his requested relief. *See Thuraissigiam*, 591 U.S. at 138–40; *Mendoza-Linares v. Garland*, 51 F.4th 1146, 1167 (9th Cir. 2022) ("*Thuraissigiam* reaffirmed that 'an alien seeking initial admission to the United States requests a privilege and *has no constitutional rights regarding his application*,' meaning that such an alien 'has only those rights regarding admission that Congress has provided by statute.'") (emphases in original); *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) ("The recognized liberty interests of U.S. citizens and aliens are not coextensive: the Supreme Court has 'firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens.'") (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)); *Zelaya-Gonzalez*, 2023 WL 3103811, at *4 ("Binding Ninth Circuit and Supreme Court precedents are clear that Petitioner lacks any rights beyond those conferred by statute, and no statute entitles Petitioner to a bond hearing.").

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

The answer is no. *See Gevorg v. Warden of Golden State Annex Detention Facility*, 1:25-cv-00992-HBK (HC), 2025 WL 3496436, at *8 (E.D. Cal. Dec. 5, 2025) ("To find Petitioner—an arriving asylum seeker who had not yet been admitted to the United States and has an asylum application pending—is entitled to a bond hearing solely based on the length of his detention would render § 1225(b)(1) meaningless and

disregard statutorily and constitutionally significant differences among the categories of aliens seeking habeas relief."); *Doe v. Bondi*, 1:25-cv-02712, 2025 WL 3516292, at *5 (D. Colo. Nov. 4, 2025) ("[P]rocedural due process does not afford inadmissible arriving aliens subject to prolonged detention a right to release or bond hearing prior to the conclusion of removal proceedings."); *Romero v. Bondi*, 1:25-cv-993, 2025 WL 2490659, at *3 (E.D. Va. July 2, 2025); *Mendoza-Linares v. Garland*, No. 21-cv-1169-BEN (AHG), 2024 WL 3316306, *2 (S.D. Cal. June 10, 2024) ("[T]he Court finds that 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

[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).

years); *Yagao v. Figueroa*, No. 17-cv-2224-AJB-MDD, 2019 WL 1429582, at *2 (S.D. Cal. March 29, 2019) (two years). Courts in this district have found detention for much longer periods to be unreasonably prolonged. *See Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS, 2024 WL 711607 at *5 (S.D. Cal. Feb. 21, 2024) (32 months); *Sibomana*, 2023 WL 3028093, at *4 (19 months); *Sanchez-Rivera*, 2023 WL 139801 at *6 (three years); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 773 (S.D. Cal. 2020) (20 months); *Yagao*, 2019 WL 1429582, at *1 (two years since last bond hearing). The length of detention "is the most important factor." *Sanchez-Rivera*, 2023 WL 139801, at *6 (citation omitted).

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

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

The same result should follow here. Petitioner does not advance any facts or arguments to distinguish her situation from any other applicant for admission with a pending asylum case. Not only does the length of Petitioner's detention fall comparatively short of the length courts in this district have found to warrant habeas relief, but the other *Lopez* factors do not favor habeas relief either. For example, Petitioner's appeal with BIA remains pending, so there's no risk of "indefinite" detention. Nor does she allege in her amended petition that any delay in her immigration

proceedings is attributable to the U.S. Department of Homeland Security, or that the Government has otherwise acted in bad faith. *See Wokiefiuwe v. Larose,* ECF No. 10 at 4-6. These facts (or lack thereof) militate against petitioner because "back-and-forth rulings, plus general administrative backlogs, [which] were to blame for [the petitioner's] lengthy detention," did not "turn otherwise legal detention into unconstitutional punishment.". *See Doe v. Bondi*, 2025 WL 3516292, at *8-9 (quoting *Banyee v. Garland*, 115 F.4th 928, 934 (8th Cir. 2024)).

If this Court were to grant a bond hearing based solely on Petitioner's length in mandatory detention and her pending appeal to BIA, this would create a precedent where every similarly situated alien simply waits for an adverse ruling from an Immigration Judge, appeal the decision to BIA, and request immediate release after a year while their appeal remains pending. This cannot be the rule for such an unremarkable and common scenario Petitioner is in as an applicant for admission who is mandatorily detained under 1225(b)(1). Such a rule is at odds with binding "Ninth Circuit and Supreme Court precedent[.]" *See Zelaya-Gonzalez*, 2023 WL 3103811, at *3-4; *see also Gevorg*, 2025 WL 3496436, at *8.

Petitioner was detained after illegally entering the United States. Thus, Petitioner is rightly considered an applicant for admission, and her mandatory detention does not violate due process. *See 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 v. Decker*, 612 F. Supp. 3d 200, 221 (S.D.N.Y. 2020); *Gonzalez Aguilar v. Wolf*, 448 F. Supp. 3d 1202, 1212 (D.N.M. 2020); *de la Rosa Espinoza v. Guadian*, Case No. 20-3126-JWL, 2020 WL 3452967, at *6-8 (D. Kansas June 24, 2020).

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V. CONCLUSION

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

Dated: June 8, 2026

Respectfully submitted,

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