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

11 EDWIN GOMEZ INFANTE,

12 Petitioner,
13

14 v.

15 CHRISTOPHER J. LAROSE,

16 Respondents.
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Case No.: 26-cv-02554-LL-MSB

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

23 **I. INTRODUCTION**

24 Petitioner requests the Court to order his immediate release from Immigration
25 and Customs Enforcement (ICE) custody or require that he be afforded a bond hearing.
26 As an arriving alien and applicant for admission, however, Petitioner's detention is
27 mandated by 8 U.S.C. § 1225(b)(2) until the conclusion of his removal proceedings.
28 Accordingly, the Court should deny Petitioner's requests for relief.

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a native and citizen of Colombia. *See* Exhibit 1 (Notice to Appear). Petitioner was initially encountered by immigration authorities on April 18, 2023, entering the United States at or near Tecate, California, without inspection. *See id.*; *see also* Exhibit 2 (I-213 dated 4.21.2023). Petitioner was released from custody and on June 20, 2023, Petitioner was issued a Notice to Appear (NTA) at the San Francisco non-detained immigration court. *See* Exhibit 1. At some point, without any prior authorization by DHS or U.S. immigration authorities, Petitioner departed the United States while his removal proceedings were pending. *See* Exhibit 3 (I-213 dated 11.27.2025). On November 26, 2025, Petitioner attempted to enter the U.S. without inspection but was detained by U.S. Border Patrol Agents. *See id.* Petitioner was detained and then transferred to the Otay Mesa Detention Center. *See id.* Any parole petitioner might have been granted by DHS prior to this point was terminated as a matter of law based due to his departure from the U.S. 8 U.S.C. § 1182(e)(1)(i); 8 C.F.R. 212.5(e)(1)(i)(Parole shall be automatically terminated without written notice upon the departure from the United States of the alien). His removal proceedings and venue were changed to the detained Otay Mesa Immigration Court. *See* Exhibit 4 (I-830).

In removal proceedings, DHS filed a Motion to Pretermitt Petitioner's applications 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 5 (IJ Removal Order). On April 30, 2026, the Immigration Judge (IJ) granted the Motion to Pretermitt. *See* The IJ ordered Petitioner removed to Ecuador or Honduras in the alternative. *See id.* If Petitioner wishes to appeal, he must file a Notice to Appeal (NOA) no later than June 1, 2026, before the Board of Immigration Appeals (BIA).

Petitioner attempted to file an NOA but the BIA rejected Petitioner's appeal. *See* Exhibit 6 (BIA Rejected Filing). Petitioner's appeal period has not expired. As a result, there is no administratively final order of removal at this time. Petitioner remains

1 mandatorily detained under 8 U.S.C. § 1225(b)(2)(A), at the Otay Mesa Detention
2 Center. He has been in custody for less than 6 months.

3 III. STATUTORY BACKGROUND

4 Section 235 of the Immigration and Nationality Act (INA), codified at 8 U.S.C.
5 § 1225, applies to an “applicant for admission,” defined as an “alien present in the
6 United States who has not been admitted” or “who arrives in the United States.” 8
7 U.S.C. § 1225(a)(1). “[A]pplicants for admission fall into one of two categories, those
8 covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings v. Rodriguez*,
9 583 U.S. 281, 287 (2018).

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

22 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*,
23 583 U.S. at 287. It “applies to all applicants for admission not covered by §
24 1225(b)(1).” *Id.* Under § 1225(b)(2), an alien “who is an applicant for admission” shall
25 be detained for a removal proceeding “if the examining immigration officer determines
26 that [the] alien seeking admission is not clearly and beyond a doubt entitled to be
27 admitted.” 8 U.S.C. § 1225(b)(2)(A); *Matter of Q. Li*, 29 I&N Dec. 66, 68 (BIA 2025)
28 (“for aliens arriving in and seeking admission into the United States who are placed

1 directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. §
 2 1225(b)(2)(A), mandates detention ‘until removal proceedings have concluded.’”)
 3 (citing *Jennings*, 583 U.S. at 299). However, DHS has the sole discretionary authority
 4 to temporarily release on parole “any alien applying for admission to the United States”
 5 on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.”
 6 *Id.* § 1182(d)(5)(A); see *Biden v. Texas*, 597 U.S. 785, 806 (2022).

7 IV. ARGUMENT

8 Petitioner’s habeas petition should be denied because 28 U.S.C. § 1252(g) bars
 9 judicial review over her claim, and because she is lawfully detained under the INA and
 10 the Constitution.

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

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

16 Here, Petitioner’s claims of unlawful detention necessarily arise from the
 17 Department of Homeland Security’s¹ decision to commence removal proceedings
 18 against her because that decision unavoidably triggers mandatory detention under 8
 19 U.S.C. § 1225(b)(2) until the conclusion of his removal proceedings. See, e.g., *Wang v.*
 20 *United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at *6 (C.D. Cal. Aug.
 21 18, 2010) (finding section 1252(g) bars judicial review of false imprisonment claim
 22 because the plaintiff’s detention arose from the decision to commence removal
 23 proceedings, and in turn, the “statute mandating detention during removal proceedings
 24 of a person charged as an ‘arriving alien.’”).

25
 26
 27 ¹ “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 As explained by another district court, removal proceedings are commenced
 2 when, as occurred here, “the alien is issued a Notice to Appear before an immigration
 3 court.” *Herrera-Correra v. United States*, No. CV 08–2941 DSF (JCx), 2008 WL
 4 11336833, at *3 (C.D. Cal. Sept. 11, 2008); *see also* Exhibit 6 (Notice to Appear). The
 5 government “may arrest the alien against whom proceedings are commenced and detain
 6 that individual until the conclusion of those proceedings.” *Herrera-Correra*, 2008 WL
 7 11336833, at *3. “Thus, an alien’s detention throughout this process arises from the
 8 [government’s] decision to commence proceedings” and review of claims arising from
 9 such detention is barred under section 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d
 10 947, 949 (9th Cir. 2007)); *see also* *Wang*, 2010 WL 11463156, at *6.

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

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

15 Even if the Court assumed jurisdiction to review Petitioner’s claim, the Court
 16 must deny her habeas petition because Petitioner’s detention is statutorily mandated
 17 under 8 U.S.C. § 1225(b)(2)(A).

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

19 Petitioner’s claim fails because she is subject to mandatory detention under 8
 20 U.S.C. § 1225(b)(2). Under 8 U.S.C. § 1225(a)(1), an “applicant for admission” is
 21 defined as an “alien present in the United States who has not been admitted or who
 22 arrives in the United States.” As explained above, applicants for admission “fall into
 23 one of two categories, those covered by § 1225(b)(1) and those covered by §
 24 1225(b)(2).” *Jennings*, 583 U.S. at 287.

25 Section 1225(b)(2)(A) requires mandatory detention of “an alien who is *an*
 26 *applicant for admission*, if the examining immigration officer determines that an alien
 27 seeking admission is not clearly and beyond a doubt entitled to be admitted[.]” *Chavez*
 28 *v. Noem*, No. 3:25-cv-02325, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24, 2025)

(quoting 8 U.S.C. § 1225(b)(2)(A)) (emphasis in original). Petitioner contends that she is entitled to 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 he has not been granted temporary parole, section 1225(b)(2) 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)(2) and the statute does not entitle her to a bond hearing 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).

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

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

1 (“That express exception to detention implies that there are no *other* circumstances
2 under which aliens detained under [8 U.S.C.] § 1225(b) may be released.”) (emphasis
3 in original). “In sum, [8 U.S.C.] §§ 1225(b)(1) and (b)(2) mandate detention of aliens
4 throughout the completion of applicable proceedings[.]” *Id.* at 302.

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

13 In *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 138–40
14 (2020), the Supreme Court once again addressed the due process rights of individuals
15 like Petitioner—inadmissible arriving noncitizens seeking initial entry into the United
16 States. The Supreme Court stated that such individuals have no due process rights
17 “other than those afforded by statute.” *Id.* at 107; *see also id.* at 140 (“[A]n alien in
18 respondent’s position has only those rights regarding admission that Congress has
19 provided by statute.”). The Supreme Court noted that its determination was supported
20 by “more than a century of precedent.” *Id.* at 138 (citing *Nishimura Ekiu v. United*
21 *States*, 142 U.S. 651, 660 (1892); *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537,
22 544 (1950); *Mezei*, 345 U.S. at 212; *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)).
23 Because the only process due Petitioner is that afforded under section 1225(b), the
24 Court must reject her claim that her detention violates the Fifth Amendment’s Due
25 Process Clause and deny her requested relief. *See Thuraissigiam*, 591 U.S. at 138–40;
26 *Mendoza-Linares*, 51 F.4th at 1167; *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206
27 (9th Cir. 2022) (“The recognized liberty interests of U.S. citizens and aliens are not
28 coextensive: the Supreme Court has ‘firmly and repeatedly endorsed the proposition

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

6 Since the Supreme Court’s decision in *Thuraissigiam*, numerous published
 7 decisions have acknowledged *Thuraissigiam*’s impact on the precise Fifth Amendment
 8 Due Process Clause that Petitioner might have raised in this petition: Does an alien
 9 detained under 8 U.S.C. § 1225(b)(1) have a due process right to release or a bond
 10 hearing after being detained for a certain period of time? The answer is no. *See*
 11 *Mendoza-Linares v. Garland*, No. 21-cv-1169-BEN (AHG), 2024 WL 3316306, *2
 12 (S.D. Cal. June 10, 2024) (“[T]he Court finds that Petitioner has no Fifth Amendment
 13 right to a bond hearing pending his removal proceedings.”); *Zelaya-Gonzalez*, 2023
 14 WL 3103811. *3 (S.D. Cal. Apr. 25, 2023) (same); *Rodriguez Figueroa v. Garland*,
 15 535 F. Supp. 3d 122, 126–27 (W.D.N.Y. 2021); *Gonzales Garcia v. Rosen*, 513 F.
 16 Supp. 3d 329, 336 (W.D.N.Y. 2021); *St. Charles v. Barr*, 514 F. Supp. 3d 570, 579
 17 (W.D.N.Y. 2021); *Petgrave v. Aleman*, 529 F. Supp. 3d 665, 667 (S.D. Tex. 2021).

18 Even if the Court infers a constitutional right against prolonged mandatory
 19 detention, Petitioner’s claim still fails. “In general, as detention continues past a year,
 20 courts become extremely wary of permitting continued custody absent a bond hearing.”
 21 *Sibomana v. LaRose*, No. 22-cv-933-LL-NLS, 2023 WL 3028093, at *4 (S.D. Cal.
 22 April 20, 2023) (citation omitted); *see also Durand v. Allen*, No. 3:23-cv-00279-RBM-
 23 BGS, 2024 WL 711607, at *5 (S.D. Cal. Feb. 21, 2024) (detained over two-and-a-half
 24 years); *Sanchez-Rivera v. Matuszewski*, No. 22-cv-1357-MMA (JLB), 2023 WL
 25 139801, at *6 (S.D. Cal. Jan. 9, 2023) (three years); *Yagao v. Figueroa*,
 26 No. 17-cv-2224-AJB-MDD, 2019 WL 1429582, at *2 (S.D. Cal. March 29, 2019) (two
 27 years). Petitioner’s detention falls significantly short of the length courts have found to
 28 raise due process concerns.

1 In similar cases, courts in this district have applied the test in *Lopez v. Garland*,
2 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022). *See, e.g., Sanchez-Rivera*, 2023 WL 139801,
3 at *5 (“[W]hile the *Mathews [v. Eldridge]*, 424 U.S. 319 (1976)] factors may be well-
4 suited to determining whether due process requires a second bond hearing, they are not
5 particularly dispositive of whether prolonged mandatory detention has become
6 unreasonable in a particular case.”); *D.D. v. LaRose, et al.*, Case No. 25-cv-02581-BJC-
7 JLB, ECF No. 10 at 7 (S.D. Cal. Oct. 22, 2025) (considering a similar claim and finding
8 “the three-factor balancing test from *Lopez* . . . provides an appropriate assessment of
9 the possible constitutional implications of Petitioner’s ongoing detention without
10 process.”).

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

15 First, Petitioner has been detained for less than 6 months. Courts in this district
16 have found detention for much longer periods to be unreasonably prolonged. *See*
17 *Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS, 2024 WL 711607 at *5 (S.D. Cal.
18 Feb. 21, 2024) (32 months); *Sibomana*, 2023 WL 3028093, at *4 (19 months);
19 *Sanchez-Rivera*, 2023 WL 139801 at *6 (three years); *Kydyrali v. Wolf*, 499 F. Supp.
20 3d 768, 773 (S.D. Cal. 2020) (27 months); *Yagao*, 2019 WL 1429582, at *1 (42
21 months). The length of detention “is the most important factor.” *Sanchez-Rivera*, 2023
22 WL 139801, at *6 (citation omitted). And Petitioner’s current detention does not fall
23 within the range those courts have found to be unreasonable. Moreover, the length of
24 Petitioner’s detention, by itself, does not favor granting habeas relief. *See Sadeqi v.*
25 *LaRose*, No. 25-cv-2587-RSH-BJW, 2025 WL 3154520, at *3 (S.D. Cal. Nov. 12,
26 2025) (“The Court agrees with Respondents that the length of Petitioner’s detention to
27 date—almost 12 months—does not by itself, without more, establish prolonged
28 detention in violation of due process.”).

1 A recent decision, *Markov v. Larose*, is instructive. 25-CV-3811 JLS (SBC),
2 2026 WL 92069 (S.D. Cal. January 13, 2026). There, the Petitioner had been detained
3 under 8 U.S.C. § 1225 for “almost exactly one-year” without a bond hearing. *Id.* at *2.
4 Although he alleged that his final merits hearing had been postponed “five times due
5 to the government,” and there was “no merits hearing scheduled,” the court nonetheless
6 denied the petition. *Id.* at *2. In doing so, it reasoned that the mere “length of detention,
7 *without more*, does not render his detention unreasonable.” *Id.* (emphasis added).

8 Not only does the length of Petitioner’s detention fall comparatively short of the
9 length courts in this district have found to warrant habeas relief, but the other *Lopez*
10 factors do not favor habeas relief either. Second, the likely duration of future detention
11 weighs against Petitioner. Once BIA rules on Petitioner’s appeal, his path to release or
12 removal should be clear. Finally, there is no indication of any delay in the removal
13 proceedings on the part of the U.S. Department of Homeland Security (DHS).

14 Ordering a bond hearing or release based simply on the length of detention is
15 inappropriate here, especially when (i) Petitioner’s departure and subsequent attempt
16 to re-enter the U.S. undetected is the reason he is detained, and (ii) DHS never
17 requested any continuances. *See Oladipupo v. Schmidt*, No. 23-CV-294, 2023 WL
18 3568498, at *6 (E.D. Wis. May 18, 2023) (denying petition for Petitioner mandatorily
19 detained under § 1226(c) because while [s]he “certainly has the right to pursue all
20 available remedies to combat [her] removal, post-*Jennings*, [s]he does not have the
21 right to parlay that resulting delay into a bond hearing.”) (citation omitted). Balancing
22 the above factors, the record does not support a finding that “detention has become so
23 unreasonable as to require an initial bond hearing,” *Sanchez-Rivera*, 2023 WL 139801,
24 at *6, or an order requiring Petitioner’s release.

25 Petitioner was lawfully detained when he applied for admission to the United
26 States. As a result, Petitioner is rightly considered an applicant for admission, and his
27 mandatory detention does not violate due process. *See Duran Romero v. LaRose*, No.
28 25-cv-3567-AGS-VET, ECF No. 7 (S.D. Cal. Jan. 14, 2026); *Shahin v. Noem*, No. 25-

1 cv-2496-AGS-KSC, ECF No. 12 (S.D. Cal. Dec. 23, 2025); *Cordova Cordova*, No.
2 25-cv-2426-BAS-DDL, ECF No. 9 (S.D. Cal. Nov. 14, 2025); *Mendez Ramirez v.*
3 *Decker*, 612 F. Supp. 3d 200, 221 (S.D.N.Y. 2020); *Gonzalez Aguilar v. Wolf*, 448 F.
4 Supp. 3d 1202, 1212 (D.N.M. 2020); *de la Rosa Espinoza v. Guadian*, Case No. 20-
5 3126-JWL, 2020 WL 3452967, at *6-8 (D. Kansas June 24, 2020).

6 **V. CONCLUSION**

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

9
10 Dated: May 15, 2026

Respectfully submitted,

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14 ANTONIO ESTRADA
15 Special Assistant United States Attorney
16 Attorneys for Respondents
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