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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ZHONGYI SHENG, Petitioner, v. PATRICK DIVVER, et al., Respondents.	No.: 26-cv-02737-RSH-VET **RETURN TO PETITION FOR WRIT OF HABEAS CORPUS**

I. INTRODUCTION

Petitioner requests that the Court order his release or Respondents to provide him a bond hearing. *See* ECF No. 1, at 15. 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 China. *See* Exhibit 1 (Notice to Appear).[1] On October 29, 2025, Petitioner applied for admission via the San Ysidro, California Port of Entry. *See id*; *see also* Exhibit 2 (I-213) at 3. Petitioner admitted "that he had made a wrong turn into Mexico and that he is an U[ber] driver." *See id.* Furthermore, queries show that Petitioner "filed an application for asylum on 04/25/2023." *See id.* As a result of Petitioner's departure into Mexico, he abandoned his pending Asylum application. *See* 8 CFR § 1208.8 (a)(An applicant who leaves the United States without first obtaining advance parole under § 212.5(f) of this chapter shall be presumed to have abandoned his or her [Asylum] application.)

At that time, Petitioner did not have any valid entry documents to enter the United States and was not then admitted or paroled into the United States. See Exhibit 1. 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* Exhibit 1 at 8.

Petitioner manifested a fear of return, persecution, and/or torture if returned to China, so he was referred for a Credible Fear Interview (CFI), in which an U.S. Citizenship and Immigration Services (USCIS) Asylum Officer interviewed Petitioner and concluded he establish a credible fear of persecution or torture if returned to China. *See* Exhibit 1 at 2, 36.

On November 21, 2025, 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* Exhibit 1. The filing of the NTA initiated removal proceedings,

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

pursuant to 8 U.S.C. § 1229a, against Petitioner. Those removal proceedings remain ongoing.

His initial master calendar hearing was December 2, 2025. *See* Exhibit 3 (Department of Justice – Executive Officer for Immigration Review case details) at 12. While it is true that Petitioner's IJ was reassigned, it is also true that Petitioner has requested continuances for his benefit, i.e. the Petitioner requested continuances on December 4, 2025; January 7, 2026 and March 17, 2026. *See id.*[2] Petitioner's merits hearing is scheduled for June 3, 2026 at 10 A.M. P.S.T. *See* Exhibit 4 (Notice of Hearing). Within his removal proceedings under § 1229a, Petitioner has had the opportunity to apply for relief from removal before an immigration judge (IJ), 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.

Petitioner has been detained for about 193 days, that is, for a little over six months. While his proceedings remain ongoing, Petitioner remains mandatorily detained at the Otay Mesa Detention Center under 8 U.S.C. § 1225(b)(1)(B).[3]

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).

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[2] The adjournment codes listed under the Decision/Adjournment Column reflect the outcome of the proceeding and/or reason for the adjournment. Code "01" reflects a continuance for the alien "to seek representation," and Code "02" reflects a continuance to provide more time for the alien to prepare. *See* https://www.justice.gov/eoir/eoir-policy-manual/appendices-o (last visited January 29, 2026).

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

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 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[4] 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

[4] "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).

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 1 (Notice to Appear). The government "may arrest the alien against whom proceedings are commenced and detain 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 his 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.[5]

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

[5] 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.

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 his 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 [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 him released from ICE custody. 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)(1)(B) mandates his 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 him to release at this time, his 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 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).[6]

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,

[6] *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).

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

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

Duration of Detention. Here, Petitioner has been detained for a little over six months. 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).

Notably, 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. Although he alleged that his final merits hearing had been postponed "five times due to the government," and there was "no merits hearing scheduled," the court nonetheless denied the petition. *Id.* at *2. In doing so, it reasoned that the mere "length of detention, *without more*, does not render his detention unreasonable." *Id.* (emphasis added).

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

continues past a year, courts become extremely wary of permitting continued custody absent a bond hearing.").

The same result should follow here. Petitioner, who has been detained for less than six months, does not allege any facts or advance any argument to distinguish his 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.

Likely Duration of Future Detention. Petitioner has a merits hearing scheduled for June 3, 2026. *See* Exhibit 4. *See Markov*, 2026 WL 92069 at *2 (denying petition even though the Petitioner, who had been detained for one year, complained no merits hearing was scheduled). In other words, Petitioner's matter is near a resolution to his removal proceedings. Critically, "unlike aliens detained under 8 U.S.C. § 1231 whose detention could be 'indefinite' and 'potentially permanent,' aliens detained under § 1225(b) face a definite termination point." *See Gevorg*, 2025 WL 3496436, at *7.

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

Here, Petitioner's detention cannot be described as "indefinite" because his detention has a definite termination point (i.e., relief or a final order of removal), unlike the Petitioners in *Zadvydas. See Demore v. Kim*, 538 U.S. at 512 (distinguishing *Zadyvdas*, because while the period of detention at issue there was "indefinite" and "potentially permanent," the detention in *Kim,* under § 1226(c) "has a definite termination point").

Delays caused by Petitioner or Government. This final factor also weighs against Petitioner. While it is true there have been some delays in Petitioner's removal proceedings, Petitioner also contributed to the delay. As explained above, Petitioner's matter was continued three times at his request. *See* Exhibit 3 (stating Code 01, which means adjournment in order for alien to seek legal counsel, and Code 02, which means time for alien to prepare).[7] His continuance requests have therefore naturally contributed to his immigration proceeding being delayed until June 3, 2026.

Courts have denied relief to petitioners detained more than a year—when they have contributed to the delay. *See, e.g.*, *Traore*, 2019 WL 3890227, at *5 (denying petition for petitioner detained under 1225(b)(2) for around 20 months because, "[w]hile this Court does not fault or punish [Petitioner] for aggressively litigating his immigration proceedings, the multiple motions requiring briefing schedules and the adjustment of hearing dates naturally prolongs his detention"); *Fatule-Roque*, 2018 WL 3584696, at *5 (finding 15 month detention not unreasonable in light of the petitioner's filing of multiple motions to continue immigration hearings and to correct an error in an I-360 application).

The delay factor therefore weighs against Petitioner. *See Demore v. Kim,* 538 U.S. at 530-31 ("Respondent was detained for somewhat longer than the average…but respondent himself had requested a continuance of his removal hearing."); *Doe v. Andrews*, 2025 WL 3280777, at *11 ("While Petitioner certainly has the right to pursue all available avenues to combat his removal, post-*Jennings*, he does not have the right to parlay the resulting delay into a bond hearing.") (citation omitted).

If this court were to grant a bond hearing based solely on Petitioner's mandatory detention for less than a year—without requiring more (i.e., foot-dragging or bad-faith by DHS)—this would create a precedent where every similarly situated alien simply

[7] *See* FN 2 for definition of Adjournment Codes.

prolongs out their immigration proceeding with continuances and appeals to only request immediate release after a year while their case 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.

Petitioner was detained as an alien present in the United States who has not been admitted or paroled. Thus, Petitioner is rightly considered an applicant for admission, and his 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).

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: May 11, 2026

Respectfully submitted,

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