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

10
11 BISRAT GIDEY DERBEW,

Case No.: 26-cv-02803-JAO-DEB

12 Petitioner,

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

13
14 v.

15 CHRISTOPHER LAROSE, Warden of
16 Otay Mesa Detention Center; *et al.*,

17 Respondents.
18

19
20 **I. INTRODUCTION**

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

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1 **II. FACTUAL AND PROCEDURAL BACKGROUND**

2 Petitioner is a native and citizen of Ethiopia, who entered the United States
3 without inspection near the Tecate port of entry in California, on September 10, 2025.
4 *See* Exhibit 1 (Form I-213).¹ Petitioner did not then have any valid entry documents to
5 enter the United States. *See id.* He was determined to be inadmissible under 8 U.S.C.
6 § 1182(a)(7)(A)(i)(I), placed in expedited removal proceedings pursuant to 8 U.S.C. §
7 1225(b)(1), and taken into Immigration and Customs Enforcement (ICE) custody
8 pursuant to 8 U.S.C. § 1225(b)(1)(B). *See* Exhibit 2 (Notice and Order of Expedited
9 Removal). Petitioner was subsequently interviewed by an asylum officer, pursuant to 8
10 U.S.C. § 1225(b)(1)(B). After receiving a positive credible fear determination,
11 Petitioner was issued a Notice to Appear (NTA), which initiated removal proceedings
12 against Petitioner, pursuant to 8 U.S.C. § 1229a. *See* Exhibit 3 (Notice to Appear).
13 Within his removal proceedings, Petitioner applied for relief from removal before an
14 immigration judge, including asylum under 8 U.S.C. § 1158, withholding of removal
15 under 8 U.S.C. § 1231(b)(3), and relief under the Convention Against Torture. *See*
16 Exhibit 4 (Decision and Order of Immigration Judge).

17 On February 2, 2026, the Department of Homeland Security (DHS) filed a
18 Motion to Pretermitt (“Motion”) the Petitioner’s applications for relief because
19 Petitioner is subject to the Asylum Cooperative Agreement (ACA) with Uganda. *See*
20 Exhibit 4; ECF No. 1 at 7. On February 18, 2026, an Immigration Judge denied
21 Petitioner’s applications for relief, granted the Motion, and ordered Petitioner removed
22 to Uganda. *See id.* On March 5, 2026, Petitioner appealed the removal order to the Board
23 of Immigration Appeals (BIA). *See* Exhibit 5 (Receipt for Appeal). Petitioner’s appeal
24 is still pending with the BIA. As a result, there is no administratively final order of
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28 ¹ The attached exhibits are true copies, with redactions of private information, of documents obtained from Immigration and Customs Enforcement (ICE) counsel.

1 removal at this time and Petitioner remains mandatorily detained under 8 U.S.C. §
2 1225(b)(2)(A).

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 IV. ARGUMENT

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

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

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

10 As explained by another district court, removal proceedings are commenced
11 when, as occurred here, “the alien is issued a Notice to Appear before an immigration
12 court.” *Herrera-Correra v. United States*, No. CV 08–2941 DSF (JCx), 2008 WL
13 11336833, at *3 (C.D. Cal. Sept. 11, 2008); *see also* Exhibit 3 (Notice to Appear). The
14 government “may arrest the alien against whom proceedings are commenced and detain
15 that individual until the conclusion of those proceedings.” *Herrera-Correra*, 2008 WL
16 11336833, at *3. “Thus, an alien’s detention throughout this process arises from the
17 [government’s] decision to commence proceedings” and review of claims arising from
18 such detention is barred under section 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d
19 947, 949 (9th Cir. 2007)); *see also Wang*, 2010 WL 11463156, at *6.

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

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

2 Even if the Court assumed jurisdiction to review Petitioner’s claim, the Court
3 must deny his habeas petition because Petitioner’s detention is statutorily mandated
4 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).**

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

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

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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 process due to
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 approximately eight months. Courts in this
8 district have found detention for much longer periods to be unreasonably prolonged.
9 *See 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 February
24 18, 2026, an immigration judge ordered Petitioner’s removal to Uganda pursuant to the
25 government’s Asylum Cooperation Agreement with Uganda. *See Exhibit 4*. Petitioner
26 promptly filed an appeal, which is still pending with the BIA. *See Exhibit 5*. Finally,
27 there is no indication of any delay in the removal proceedings on the part of the
28 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.

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16 Dated: May 11, 2026

Respectfully submitted,

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