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

10
11 RABIA BETUL YILDIZ,
12
13 Petitioner,

Case No.: 26-cv-02863-JLS-VET

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

14 v.

15 CHRISTOPHER J. LAROSE,
16
17 Respondents.
18

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21
22
23 **I. INTRODUCTION**

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

1 **II. FACTUAL AND PROCEDURAL BACKGROUND**

2 Petitioner is a native and citizen of Turkey. *See* Exhibit 1 (Notice to Appear). She
3 initially entered the U.S. on July 18, 2024, as an unaccompanied child (UAC). *See id.*
4 Because Petitioner was a UAC at the time of entry, she was released to the custody of
5 her father on August 2, 2024. *See* Exhibit 2 (Verification of Release). On October 30,
6 2024, she was issued a Notice to Appear (NTA) and placed in removal proceedings. *See*
7 Exhibit 1. At some point, Petitioner departed the U.S. and on September 5, 2025 (now
8 an adult over the age of 18), she was apprehended by immigration authorities entering
9 the U.S. without inspection. *See* Exhibit 3 (I-213 dated September 7, 2025). Any parole
10 issued to Petitioner by ICE was terminated due to her departure from the U.S. *See* 8
11 U.S.C. § 1182(e)(1)(i); 8 CFR § 212.5(e)(1)(i)(Parole shall be automatically terminated
12 without written notice upon the departure from the United States of the alien)

13 Petitioner was transferred to the Otay Mesa Detention Center, and the
14 Department of Homeland Security (DHS) then moved to change venue to the Otay Mesa
15 Immigration Court. *See* Exhibit 4 (I-830). Petitioner has remained DHS custody since,
16 that is, for around 8 months.

17 Within her removal proceedings under § 1229a, Petitioner had the opportunity to
18 apply for relief from removal before an immigration judge (IJ), including asylum under
19 8 U.S.C. § 1158, withholding of removal under 8 U.S.C. § 1231(b)(3), and relief under
20 the Convention Against Torture.

21 Petitioner’s first hearing at the Otay Mesa Immigration Court was held on
22 October 16, 2025. *See* Exhibit 5 (Department of Justice – Executive Officer for
23 Immigration Review details) at 9. Petitioner’s Counsel requested a continuance for
24 attorney preparation to file additional evidence. *See id.* At the next master calendar
25 hearing on November 20, 2025, Petitioner’s matter was set for an individual hearing.
26 Petitioner’s first merits hearing took place on December 12, 2025. *See id.* Petitioner’s
27 merits was not completed on that date, so the merits hearing was continued to April 7,
28 2026. *See id.* At the April 7, 2026 merits hearing, the IJ denied all relief and ordered

1 Petitioner removed to Turkey. *See* Exhibit 6 (IJ Order dated April 7, 2026). On April
2 28, 2026, Petitioner timely filed an appeal of her removal order to the Board of
3 Immigration Appeals (BIA). *See* Exhibit 7 (BIA Filing Receipt).

4 As of May 14, 2026, Petitioner’s appeal with BIA remains pending. *Id.* As a
5 result, there is no administratively final order of removal at this time. Petitioner remains
6 mandatorily detained under 8 U.S.C. § 1225(b)(2)(A).

7 III. STATUTORY BACKGROUND

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

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

26 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*,
27 583 U.S. at 287. It “applies to all applicants for admission not covered by §
28 1225(b)(1).” *Id.* Under § 1225(b)(2), an alien “who is an applicant for admission” shall

1 be detained for a removal proceeding “if the examining immigration officer determines
2 that [the] alien seeking admission is not clearly and beyond a doubt entitled to be
3 admitted.” 8 U.S.C. § 1225(b)(2)(A); *Matter of Q. Li*, 29 I&N Dec. 66, 68 (BIA 2025)
4 (“for aliens arriving in and seeking admission into the United States who are placed
5 directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. §
6 1225(b)(2)(A), mandates detention ‘until removal proceedings have concluded.’”) (citing
7 *Jennings*, 583 U.S. at 299). However, DHS has the sole discretionary authority
8 to temporarily release on parole “any alien applying for admission to the United States”
9 on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.”
10 *Id.* § 1182(d)(5)(A); see *Biden v. Texas*, 597 U.S. 785, 806 (2022).

11 IV. ARGUMENT

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

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

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

20 Here, Petitioner’s claims of unlawful detention necessarily arise from the
21 Department of Homeland Security’s¹ decision to commence removal proceedings
22 against her because that decision unavoidably triggers mandatory detention under 8
23 U.S.C. § 1225(b)(2) until the conclusion of his removal proceedings. See, e.g., *Wang v.*
24 *United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at *6 (C.D. Cal. Aug.
25 18, 2010) (finding section 1252(g) bars judicial review of false imprisonment claim
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 because the plaintiff's detention arose from the decision to commence removal
2 proceedings, and in turn, the "statute mandating detention during removal proceedings
3 of a person charged as an 'arriving alien.'").

4 As explained by another district court, removal proceedings are commenced
5 when, as occurred here, "the alien is issued a Notice to Appear before an immigration
6 court." *Herrera-Correra v. United States*, No. CV 08-2941 DSF (JCx), 2008 WL
7 11336833, at *3 (C.D. Cal. Sept. 11, 2008); *see also* Exhibit 6 (Notice to Appear). The
8 government "may arrest the alien against whom proceedings are commenced and detain
9 that individual until the conclusion of those proceedings." *Herrera-Correra*, 2008 WL
10 11336833, at *3. "Thus, an alien's detention throughout this process arises from the
11 [government's] decision to commence proceedings" and review of claims arising from
12 such detention is barred under section 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d
13 947, 949 (9th Cir. 2007)); *see also Wang*, 2010 WL 11463156, at *6.

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

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

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

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

22 Petitioner's claim fails because she is subject to mandatory detention under 8
23 U.S.C. § 1225(b)(2). Under 8 U.S.C. § 1225(a)(1), an "applicant for admission" is
24 defined as an "alien present in the United States who has not been admitted or who
25 arrives in the United States." As explained above, applicants for admission "fall into
26 one of two categories, those covered by § 1225(b)(1) and those covered by §
27 1225(b)(2)." *Jennings*, 583 U.S. at 287.

28

1 Section 1225(b)(2)(A) requires mandatory detention of “an alien who is *an*
2 *applicant for admission*, if the examining immigration officer determines that an alien
3 seeking admission is not clearly and beyond a doubt entitled to be admitted[.]” *Chavez*
4 *v. Noem*, No. 3:25-cv-02325, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24, 2025)
5 (quoting 8 U.S.C. § 1225(b)(2)(A)) (emphasis in original). Petitioner contends that she
6 is entitled to a bond hearing. But the Supreme Court has rejected such contention,
7 explaining: “Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of
8 applicants for admission until certain proceedings have concluded. . . . Nothing in the
9 statutory text imposes any limit on the length of detention. And neither § 1225(b)(1)
10 nor § 1225(b)(2) says anything whatsoever about bond hearings.” *Jennings*, 583 U.S. at
11 297. Except for temporary parole granted at the discretion of the Attorney General “for
12 urgent humanitarian reasons or significant public benefit” under 8 U.S.C. § 1182(d)(5),
13 “there are no *other* circumstances under which aliens detained under § 1225(b) may be
14 released.” *Id.* at 300 (emphasis in original).

15 As Petitioner’s removal proceedings are pending, and she has not been granted
16 temporary parole, section 1225(b)(2) mandates her detention until the proceedings have
17 concluded. *Jennings*, 583 U.S. at 297 (“Once those proceedings end, detention under
18 § 1225(b) must end as well.”). Because Petitioner is lawfully detained under
19 section 1225(b)(2) and the statute does not entitle her to a bond hearing at this time, her
20 petition must be denied. *See, e.g., Zelaya-Gonzalez v. Matuszewski*, No. 23-CV-151
21 JLS-KSC, 2023 WL 3103811, at *3 (S.D. Cal. April 25, 2023) (applying *Jennings* to
22 find that the petitioner had no right to release or a bond hearing).

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

24 In *Jennings*, the Supreme Court evaluated the proper interpretation of 8 U.S.C.
25 § 1225(b). The Supreme Court stated that, “[r]ead most naturally, [8 U.S.C.]
26 §§ 1225(b)(1) and (b)(2) . . . mandate detention of applicants for admission until certain
27 proceedings have concluded.” *Id.* at 297. In other words, neither 8 U.S.C. § 1225(b)(1)
28 nor § 1225(b)(2) “impose[] any limit on the length of detention” and “neither

1 § 1225(b)(1) nor § 1225(b)(2) say[] anything whatsoever about bond hearings.” *Id.* The
2 Supreme Court added that the sole means of release for noncitizens detained pursuant
3 to 8 U.S.C. §§ 1225(b)(1) or (b)(2) prior to removal from the United States is temporary
4 parole at the discretion of the Attorney General under 8 U.S.C. § 1182(d)(5). *Id.* at 300
5 (“That express exception to detention implies that there are no *other* circumstances
6 under which aliens detained under [8 U.S.C.] § 1225(b) may be released.”) (emphasis
7 in original). “In sum, [8 U.S.C.] §§ 1225(b)(1) and (b)(2) mandate detention of aliens
8 throughout the completion of applicable proceedings[.]” *Id.* at 302.

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

17 In *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 138–40
18 (2020), the Supreme Court once again addressed the due process rights of individuals
19 like Petitioner—inadmissible arriving noncitizens seeking initial entry into the United
20 States. The Supreme Court stated that such individuals have no due process rights
21 “other than those afforded by statute.” *Id.* at 107; *see also id.* at 140 (“[A]n alien in
22 respondent’s position has only those rights regarding admission that Congress has
23 provided by statute.”). The Supreme Court noted that its determination was supported
24 by “more than a century of precedent.” *Id.* at 138 (citing *Nishimura Ekiu v. United*
25 *States*, 142 U.S. 651, 660 (1892); *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537,
26 544 (1950); *Mezei*, 345 U.S. at 212; *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)).
27 Because the only process due Petitioner is that afforded under section 1225(b), the
28 Court must reject her claim that her detention violates the Fifth Amendment’s Due

1 Process Clause and deny her requested relief. *See Thuraissigiam*, 591 U.S. at 138–40;
2 *Mendoza-Linares*, 51 F.4th at 1167; *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206
3 (9th Cir. 2022) (“The recognized liberty interests of U.S. citizens and aliens are not
4 coextensive: the Supreme Court has ‘firmly and repeatedly endorsed the proposition
5 that Congress may make rules as to aliens that would be unacceptable if applied to
6 citizens.’”) (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)); *Zelaya-Gonzalez*,
7 2023 WL 3103811, at *4 (“Binding Ninth Circuit and Supreme Court precedents are
8 clear that Petitioner lacks any rights beyond those conferred by statute, and no statute
9 entitles Petitioner to a bond hearing.”).

10 Since the Supreme Court’s decision in *Thuraissigiam*, numerous published
11 decisions have acknowledged *Thuraissigiam*’s impact on the precise Fifth Amendment
12 Due Process Clause that Petitioner might have raised in this petition: Does an alien
13 detained under 8 U.S.C. § 1225(b)(1) have a due process right to release or a bond
14 hearing after being detained for a certain period of time? The answer is no. *See*
15 *Mendoza-Linares v. Garland*, No. 21-cv-1169-BEN (AHG), 2024 WL 3316306, *2
16 (S.D. Cal. June 10, 2024) (“[T]he Court finds that Petitioner has no Fifth Amendment
17 right to a bond hearing pending his removal proceedings.”); *Zelaya-Gonzalez*, 2023
18 WL 3103811. *3 (S.D. Cal. Apr. 25, 2023) (same); *Rodriguez Figueroa v. Garland*,
19 535 F. Supp. 3d 122, 126–27 (W.D.N.Y. 2021); *Gonzales Garcia v. Rosen*, 513 F.
20 Supp. 3d 329, 336 (W.D.N.Y. 2021); *St. Charles v. Barr*, 514 F. Supp. 3d 570, 579
21 (W.D.N.Y. 2021); *Petgrave v. Aleman*, 529 F. Supp. 3d 665, 667 (S.D. Tex. 2021).

22 Even if the Court infers a constitutional right against prolonged mandatory
23 detention, Petitioner’s claim still fails. “In general, as detention continues past a year,
24 courts become extremely wary of permitting continued custody absent a bond hearing.”
25 *Sibomana v. LaRose*, No. 22-cv-933-LL-NLS, 2023 WL 3028093, at *4 (S.D. Cal.
26 April 20, 2023) (citation omitted); *see also Durand v. Allen*, No. 3:23-cv-00279-RBM-
27 BGS, 2024 WL 711607, at *5 (S.D. Cal. Feb. 21, 2024) (detained over two-and-a-half
28 years); *Sanchez-Rivera v. Matuszewski*, No. 22-cv-1357-MMA (JLB), 2023 WL

1 139801, at *6 (S.D. Cal. Jan. 9, 2023) (three years); *Yagao v. Figueroa*,
2 No. 17-cv-2224-AJB-MDD, 2019 WL 1429582, at *2 (S.D. Cal. March 29, 2019) (two
3 years). Petitioner’s detention falls significantly short of the length courts have found to
4 raise due process concerns.

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

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

19 First, Petitioner has been detained for about 8 months. Courts in this district have
20 found detention for much longer periods to be unreasonably prolonged. *See Durand v.*
21 *Allen*, No. 3:23-cv-00279-RBM-BGS, 2024 WL 711607 at *5 (S.D. Cal. Feb. 21,
22 2024) (32 months); *Sibomana*, 2023 WL 3028093, at *4 (19 months); *Sanchez-Rivera*,
23 2023 WL 139801 at *6 (three years); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 773 (S.D.
24 Cal. 2020) (27 months); *Yagao*, 2019 WL 1429582, at *1 (42 months). The length of
25 detention “is the most important factor.” *Sanchez-Rivera*, 2023 WL 139801, at *6
26 (citation omitted). And Petitioner’s current detention does not fall within the range
27 those courts have found to be unreasonable. Moreover, the length of Petitioner’s
28 detention, by itself, does not favor granting habeas relief. *See Sadeqi v. LaRose*, No.

1 25-cv-2587-RSH-BJW, 2025 WL 3154520, at *3 (S.D. Cal. Nov. 12, 2025) (“The
2 Court agrees with Respondents that the length of Petitioner’s detention to date—almost
3 12 months—does not by itself, without more, establish prolonged detention in violation
4 of due process.”).

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

12 Not only does the length of Petitioner’s detention fall comparatively short of the
13 length courts in this district have found to warrant habeas relief, but the other *Lopez*
14 factors do not favor habeas relief either. Second, the likely duration of future detention
15 weighs against Petitioner. Once BIA rules on Petitioner’s appeal, her path to release or
16 removal should be clear.

17 Finally, there is no indication of any delay in the removal proceedings on the
18 part of the U.S. Department of Homeland Security (DHS). *See* Exhibit 5. On the
19 contrary, all continuances were at the benefit of Petitioner. *See id.* Ordering a bond
20 hearing or release based simply on the length of detention is inappropriate here,
21 especially when (i) Petitioner sought multiple continuances in her removal
22 proceedings, and (ii) DHS never requested any continuances. *See Oladipupo v.*
23 *Schmidt*, No. 23-CV-294, 2023 WL 3568498, at *6 (E.D. Wis. May 18, 2023) (denying
24 petition for Petitioner mandatorily detained under § 1226(c) because while [s]he
25 “certainly has the right to pursue all available remedies to combat [her] removal, post-
26 *Jennings*, [s]he does not have the right to parlay that resulting delay into a bond
27 hearing.”) (citation omitted). Balancing the above factors, the record does not support
28 a finding that “detention has become so unreasonable as to require an initial bond

1 hearing,” *Sanchez-Rivera*, 2023 WL 139801, at *6, or an order requiring Petitioner’s
2 release.

3 Petitioner was lawfully detained when she applied for admission to the United
4 States. As a result, Petitioner is rightly considered an applicant for admission, and her
5 mandatory detention does not violate due process. *See Duran Romero v. LaRose*, No.
6 25-cv-3567-AGS-VET, ECF No. 7 (S.D. Cal. Jan. 14, 2026); *Shahin v. Noem*, No. 25-
7 cv-2496-AGS-KSC, ECF No. 12 (S.D. Cal. Dec. 23, 2025); *Cordova Cordova*, No.
8 25-cv-2426-BAS-DDL, ECF No. 9 (S.D. Cal. Nov. 14, 2025); *Mendez Ramirez v.*
9 *Decker*, 612 F. Supp. 3d 200, 221 (S.D.N.Y. 2020); *Gonzalez Aguilar v. Wolf*, 448 F.
10 Supp. 3d 1202, 1212 (D.N.M. 2020); *de la Rosa Espinoza v. Guadian*, Case No. 20-
11 3126-JWL, 2020 WL 3452967, at *6-8 (D. Kansas June 24, 2020).

12 **V. CONCLUSION**

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

15 Dated: May 14, 2026

Respectfully submitted,

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19 Antonio Estrada
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