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7  
8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10  
11 BRILIAN NCHUPOH NOPUOWOH,

12 Petitioner,

13  
14 v.

15 CHRISTOPHER J. LAROSE, Warden,  
16 Otay Mesa Detention Center,

17 Respondent.  
18

Case No.: 26-cv-03040-TWR-MMP

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

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 Cameroon, who entered the United States  
3 without inspection near the San Ysidro port of entry in California, on October 16, 2025.  
4 See Exhibit 1 (Form I-213).<sup>1</sup> 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 asylum relief from removal  
14 before an immigration judge. See ECF No. 1-2 at 3.

15 The Notice to Appear scheduled Petitioner’s initial master calendar hearing for  
16 November 10, 2025. See Exhibit 3. Since that time, the Department of Homeland  
17 Security (DHS) filed a Motion to Pretermite (“Motion”) the Petitioner’s applications for  
18 relief because Petitioner is subject to the Asylum Cooperative Agreement (ACA) with  
19 Uganda. See Exhibit 4. On April 15, 2026, an Immigration Judge denied Petitioner’s  
20 applications for relief, granted the Motion, and ordered Petitioner removed to Uganda.  
21 See *id.* On April 30, 2026, Petitioner appealed the removal order to the Board of  
22 Immigration Appeals (BIA). See Exhibit 5 (Filing Receipt for Appeal); ECF No. 1-2 at  
23 3. Petitioner’s appeal is still pending with the BIA. As a result, there is no  
24 administratively final order of removal at this time. Petitioner remains mandatorily  
25 detained under 8 U.S.C. § 1225(b)(1)(B)(ii).

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28 <sup>1</sup> The attached exhibits are true copies, with redactions of private information, of documents obtained from Immigration and Customs Enforcement (ICE) counsel.

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### III. STATUTORY BACKGROUND

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

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

Respondent contends 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.”

1 Here, Petitioner’s claims of unlawful detention necessarily arise from the  
2 Department of Homeland Security’s<sup>2</sup> decision to commence removal proceedings  
3 against his 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 <sup>2</sup> “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 Respondent to provide him with an  
21 individualized bond hearing. But the Supreme Court has rejected such contention,  
22 explaining: “Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of  
23 applicants for admission until certain proceedings have concluded. . . . Nothing in the  
24 statutory text imposes any limit on the length of detention. And neither § 1225(b)(1)  
25 nor § 1225(b)(2) says anything whatsoever about bond hearings.” *Jennings*, 583 U.S. at  
26 297. Except for temporary parole granted at the discretion of the Attorney General “for  
27 urgent humanitarian reasons or significant public benefit” under 8 U.S.C. § 1182(d)(5),  
28

1 “there are no *other* circumstances under which aliens detained under § 1225(b) may be  
2 released.” *Id.* at 300 (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 his 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 seven months. Courts in  
8 this district have found detention for much longer periods to be unreasonably  
9 prolonged. *See Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS, 2024 WL 711607 at  
10 \*5 (S.D. Cal. Feb. 21, 2024) (32 months); *Sibomana*, 2023 WL 3028093, at \*4 (19  
11 months); *Sanchez-Rivera*, 2023 WL 139801 at \*6 (three years); *Kydyrali v. Wolf*, 499  
12 F. Supp. 3d 768, 773 (S.D. Cal. 2020) (27 months); *Yagao*, 2019 WL 1429582, at \*1  
13 (42 months). The length of detention “is the most important factor.” *Sanchez-Rivera*,  
14 2023 WL 139801, at \*6 (citation omitted). And Petitioner’s current detention does not  
15 fall within the range those courts have found to be unreasonable. Moreover, the length  
16 of 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 April 15,  
24 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, Respondent respectfully requests that the Court  
14 dismiss this petition for lack of jurisdiction or deny it on the merits.

15  
16 Dated: May 20, 2026

Respectfully submitted,

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