

ADAM GORDON  
United States Attorney  
CAMILLE SAVEDRA  
California Bar No. 336490  
Assistant U.S. Attorney  
Office of the U.S. Attorney  
880 Front Street, Room 6293  
San Diego, CA 92101-8893  
Telephone: (619) 546-5084  
Email: camille.savedra@usdoj.gov

Attorneys for Respondent

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

EMIN DEMIRCI,

Petitioner,

v.

CHRISTOPHER J. LAROSE, Senior  
Warden, Otay Mesa Detention Center,

Respondent.

Case No.: 26-cv-03397-DMS-MMP

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

**I. INTRODUCTION**

Petitioner requests that the Court order his release from Immigration and Customs Enforcement (ICE) custody. 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 of Turkey, who entered the United States without inspection near Tecate, California, on October 18, 2025. *See* Exhibit 1 (Form I-213).<sup>1</sup> Petitioner did not then have any valid entry documents to enter the United States. 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 2 (Notice and Order of Expedited Removal). He was then interviewed by an asylum officer, pursuant to 8 U.S.C. § 1225(b)(1)(B). After receiving a positive credible fear determination, Petitioner was issued a Notice to Appear (NTA). *See* Exhibit 3 (Notice to Appear).<sup>2</sup> The filing of the NTA initiated removal proceedings, pursuant to 8 U.S.C. § 1229a, against Petitioner, and those proceedings remain ongoing. Within his removal proceedings under § 1229a, Petitioner 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.

The Notice to Appear scheduled Petitioner's initial master calendar hearing for November 17, 2025. *See* Exhibit 3. Petitioner's removal proceedings took place on April 14, 2026 and April 28, 2026. *See* Exhibit 4 (Department of Justice – Executive Office of Immigration Review (DOJ-EOIR) Event Dates) and Exhibit 5 (EOIR Adjournment Codes Memo). On June 9, 2026, the IJ issued a decision denying Petitioner's applications for withholding of removal and ordering Petitioner removed to Turkey. *See* Exhibit 6 (Decision and Orders of the Immigration Judge). Petitioner has

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

<sup>2</sup> The box on the Notice to Appear form indicating Petitioner was found to have a credible fear was inadvertently not checked. The asylum officer made a positive credible fear finding on October 29, 2025.

thirty days from the date of the removal order to file an appeal with the Board of Immigration Appeals (BIA). *See id.* As a result, there is no administratively final order of removal at this time. Petitioner remains mandatorily detained under 8 U.S.C. § 1225(b)(1)(B).

### 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).

Respondents contend that judicial review over Petitioner’s claim is barred by 8 U.S.C. § 1252(g), which states that “[n]o court shall have jurisdiction to hear any cause

1 or claim by or on behalf of any alien arising from the decision or action by the Attorney  
2 General to commence proceedings, adjudicate cases, or execute removal orders.”

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

12 As explained by another district court, removal proceedings are commenced  
13 when, as occurred here, “the alien is issued a Notice to Appear before an immigration  
14 court.” *Herrera-Correra v. United States*, No. CV 08–2941 DSF (JCx), 2008 WL  
15 11336833, at \*3 (C.D. Cal. Sept. 11, 2008); *see also* Exhibit 3 (Notice to Appear). The  
16 government “may arrest the alien against whom proceedings are commenced and detain  
17 that individual until the conclusion of those proceedings.” *Herrera-Correra*, 2008 WL  
18 11336833, at \*3. “Thus, an alien’s detention throughout this process arises from the  
19 [government’s] decision to commence proceedings” and review of claims arising from  
20 such detention is barred under section 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d  
21 947, 949 (9th Cir. 2007)); *see also Wang*, 2010 WL 11463156, at \*6.

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

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27 <sup>3</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).

**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.

**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 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*

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  
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 applies the test in *Banda v.*  
22 *McAleenan*, 385 F. Sup. 3d 1099, 1106 (W.D. Wash. 2019), first adopted by Judge  
23 Battaglia in *Kydyrali v. Wolf*, 499 F. Supp. 3d 768 (S.D. Cal. 2020). Under *Banda*, to  
24 determine whether continued mandatory detention has become unreasonable, courts  
25 look at (1) total length of detention to date; (2) likely duration of future detention; (3)  
26 conditions of detention; (4) delays in the removal proceedings caused by the detainee;  
27 (5) delays in the removal proceedings caused by the government; and (6) the likelihood  
28

1 that the removal proceedings will result in a final order of removal. *Banda*, 385 F. Sup.  
2 3d at 1106.

3 First, Petitioner's approximate 8-month detention should not favor granting his  
4 release. The length of detention in *Kydyrali* was 27 months, three times as long as  
5 Petitioner's detention. *See Kydyrali*, 499 F. Supp. 3d at 773. This relatively short  
6 duration does not justify habeas relief. *See Prieto-Romero v. Clark*, 534 F.3d 1053,  
7 1065 (9th Cir. 2008) (finding no constitutional violation in detention of more than three  
8 years under § 1226(a)); *see also Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS, 2024  
9 WL 711607 at \*5 (S.D. Cal. Feb. 21, 2024) (32 months); *Sibomana*, 2023 WL  
10 3028093, at \*4 (19 months); *Sanchez-Rivera*, 2023 WL 139801 at \*6 (three years);  
11 *Yagao v. Figueroa*, No. 17-CV-2224-AJB-MDD, 2019 WL 1429582, at \*1 (S.D. Cal.  
12 Mar. 29, 2019) (42 months).

13 Notably, "the length of detention . . . is the most important factor." *Banda*, 385  
14 F. Supp. 3d at 1118. In short, the period of Petitioner's detention is reasonable.  
15 Moreover, the length of Petitioner's detention, by itself, does not favor granting habeas  
16 relief. *See Sadeqi v. LaRose*, No. 25-cv-2587-RSH-BJW, 2025 WL 3154520, at \*3  
17 (S.D. Cal. Nov. 12, 2025) ("The Court agrees with Respondents that the length of  
18 Petitioner's detention to date—almost 12 months—does not by itself, without more,  
19 establish prolonged detention in violation of due process.").

20 Second, the likely duration of future detention weighs against Petitioner.  
21 Petitioner's individual merits hearing resulted in a removal order to Turkey on June 9,  
22 2026. *See Exhibit 6*. If Petitioner does not appeal the removal order to the BIA within  
23 30 days, Petitioner's path removal should be clear. Any length of detention after that  
24 point is purely speculative.

25 The third factor, the conditions of detention, is neutral. To begin, Petitioner's  
26 medical-related grievances derive from pre-existing injuries he sustained prior to  
27 detention and not from the detention facility itself. *See ECF No. 1-2*. Moreover,  
28 Petitioner admits detention staff took him to a medical center after he fell out of his

1 bed, and allowed Petitioner to receive follow-up care from a doctor. *See id.* Finally,  
2 Petitioner's complaints about the food served at the detention center appears to be due  
3 to Petitioner's dietary preference. *See* ECF No. 1-2 at 4. In all, Petitioner's alleged  
4 grievances do not adequately describe conditions that "resemble penal confinement[.]"  
5 *See Banda*, 385 F. Supp. 3d at 1119.

6 The fourth and fifth factors (delays in the removal proceedings caused by  
7 Petitioner and the government) are neutral, as the record does not reflect any unusual  
8 delays in removal proceedings. *See* Exhibits 4 and 5. For instance, Petitioner's merits  
9 hearing took two days for the immigration court to hear all the evidence presented. *See*  
10 *id.* This is not uncommon occurrence in immigration proceedings. The sixth and final  
11 factor weighs in favor of Respondent because an immigration judge has entered a  
12 removal order against Petitioner, which Petitioner has yet to appeal to the BIA.

13 Balancing the above factors, the record does not support a finding that "detention  
14 has become so unreasonable as to require an initial bond hearing," *Sanchez-Rivera*,  
15 2023 WL 139801, at \*6, or an order requiring Petitioner's release.

16 Balancing the above factors, the record does not support a finding that "detention  
17 has become so unreasonable as to require an initial bond hearing," *Sanchez-Rivera*,  
18 2023 WL 139801, at \*6, or an order requiring Petitioner's release.

19 Accordingly, Petitioner is subject to mandatory detention, which does not violate  
20 due process. *See Markov v. LaRose*, No. 25-CV-3811 JLS (SBC), 2026 WL 92069 (S.D.  
21 Cal. Jan. 13, 2026) ("Petitioner's length of detention, without more, does not render his  
22 detention unreasonable."); *Duran Romero v. LaRose*, No. 25-cv-3567-AGS-VET, ECF  
23 No. 7 (S.D. Cal. Jan. 14, 2026); *Shahin v. Noem*, No. 25-cv-2496-AGS-KSC, ECF No.  
24 12 (S.D. Cal. Dec. 23, 2025); *Cordova Cordova*, No. 25-cv-2426-BAS-DDL, ECF No.  
25 9 (S.D. Cal. Nov. 14, 2025); *Mendez Ramirez*, 612 F. Supp. 3d at 221; *Gonzalez Aguilar*  
26 *v. Wolf*, 448 F. Supp. 3d at 1212; *de la Rosa Espinoza*, 2020 WL 3452967, at \*6-8.

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