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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 NIKOLAY NAZAROV,

12 Petitioner,
13

14 v.

15 WARDEN et al.,

16 Respondents.
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Case No.: 26-cv-3401-RBM-AHG

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

23 **I. INTRODUCTION**

24 Petitioner, an alien ordered removed from the country and presently in the
25 custody of Immigration and Customs Enforcement (“ICE”), seeks a court-ordered bond
26 hearing. Dkt. 12. As an applicant for admission, Petitioner’s detention is mandatory
27 until the conclusion of removal proceedings. *See* 8 U.S.C. § 1225(b)(2). Accordingly,
28 the Court should deny the Petition.

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a native Russian citizen. *See* Ex. A.¹ On September 23, 2025, Petitioner applied for admission to the United States at the San Ysidro Port of Entry. Ex. B. He did not then possess legal documentation to be in or enter the United States. *Id.* He was determined to be an arriving alien inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I), placed into expedited removal proceedings under 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* Ex. A, B. Petitioner received a Notice to Appear after an asylum officer determined he had a credible fear of persecution. *See* Ex. A. On April 20, 2026, an immigration judge denied Petitioner's asylum claims and ordered his removal to Russia. Ex. C. Petitioner appealed the IJ's decision on May 19, 2026. Ex. D. Because Petitioner's appeal to the BIA remains pending, there is no administratively final order of removal at this time, and Petitioner remains mandatorily detained under 8 U.S.C. section 1225(b)(1)(B)(ii).

III. STATUTORY BACKGROUND

Section 235 of the Immigration and Nationality Act (INA) 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

¹ All attached exhibits are true and correct copies from ICE records.

1 officers will refer the alien for a credible fear interview. 8 U.S.C. § 1225(b)(1)(A)(ii).
2 “If the officer determines at the time of the interview that [the] alien has a credible fear
3 of persecution . . . , the alien *shall be detained* for further consideration of the
4 application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii) (emphasis added). If the alien
5 does not indicate an intent to apply for asylum, does not express a fear of persecution,
6 or is “found not to have such a fear,” they “shall be detained . . . until removed” from
7 the United States. 8 U.S.C. §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

8 IV. ARGUMENT

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

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

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

23 As explained by another district court, removal proceedings are commenced
24 when “the alien is issued a Notice to Appear before an immigration court.”
25 *Herrera-Correra v. United States*, No. CV 08–2941 DSF (JCx), 2008 WL 11336833,

26
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 at *3 (C.D. Cal. Sept. 11, 2008). Petitioner received an NTA in this case, which
2 commenced removal proceedings against him. *See* Ex. A. The government “may arrest
3 the alien against whom proceedings are commenced and detain that individual until the
4 conclusion of those proceedings.” *Herrera-Correra*, 2008 WL 11336833, at *3. “Thus,
5 an alien’s detention throughout this process arises from the [government’s] decision to
6 commence proceedings” and review of claims arising from such detention is barred
7 under section 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007));
8 *see also* *Wang*, 2010 WL 11463156, at *6.

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

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

13 Even if the Court assumed jurisdiction to review Petitioner’s claim, the Court
14 should deny the Petition because Petitioner is mandatorily detained under 8 U.S.C.
15 section 1225(b)(1)(B)(ii), and his detention has not been unconstitutionally prolonged.

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

17 Petitioner is admittedly an arriving alien. *See* Dkt. 12 at 3. As discussed above,
18 arriving aliens are applicants for admission who are subject to expedited removal
19 proceedings under 28 U.S.C. section 1225(b)(1)(A)(i) unless—as occurred here—an
20 asylum officer has determined they credibly fear persecution under 28 U.S.C.
21 section 1225(b)(1)(B)(ii). In such cases, the INA mandates “the alien *shall be detained*
22 for further consideration of the application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii)
23 (emphasis added); *see also* *Matter of M-S*, 27 I. & N. Dec. 509, 519 (AG 2019) (“all
24 aliens transferred from expedited to full [removal] proceedings after establishing a
25 credible fear are ineligible for bond”). Because Petitioner is an arriving alien found to
26 have a credible fear of persecution and placed in full removal proceedings, his
27 detention is mandated by section 1225(b) until the conclusion of his removal
28 proceedings. *See* *Jennings*, 583 U.S. at 302 (“§§ 1225(b)(1) and (b)(2) mandate

1 detention of aliens throughout the completion of applicable proceedings”); *see also*,
2 *e.g.*, *Zelaya-Gonzalez v. Matuszewski*, No. 23-CV-151 JLS-KSC, 2023 WL 3103811,
3 at *3 (S.D. Cal. April 25, 2023) (applying *Jennings* to find the petitioner had no right
4 to release or a bond hearing).

5 In *Jennings*, the Supreme Court evaluated the proper interpretation of 8 U.S.C.
6 § 1225(b). The Supreme Court stated that, “[r]ead most naturally, [8 U.S.C.]
7 §§ 1225(b)(1) and (b)(2) . . . mandate detention of applicants for admission until certain
8 proceedings have concluded.” *Id.* at 297. In other words, neither 8 U.S.C. § 1225(b)(1)
9 nor § 1225(b)(2) “impose[] any limit on the length of detention” and “neither
10 § 1225(b)(1) nor § 1225(b)(2) say[] anything whatsoever about bond hearings.” *Id.* The
11 Supreme Court added that the sole means of release for noncitizens detained pursuant
12 to 8 U.S.C. §§ 1225(b)(1) or (b)(2) prior to removal from the United States is temporary
13 parole at the discretion of the Attorney General under 8 U.S.C. § 1182(d)(5). *Id.* at 300
14 (“That express exception to detention implies that there are no *other* circumstances
15 under which aliens detained under [8 U.S.C.] § 1225(b) may be released.”) (emphasis
16 in original). “In sum, [8 U.S.C.] §§ 1225(b)(1) and (b)(2) mandate detention of aliens
17 throughout the completion of applicable proceedings[.]” *Id.* at 302.

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

26 In *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 138–40
27 (2020), the Supreme Court once again addressed the due process rights of individuals
28 like Petitioner—inadmissible arriving noncitizens seeking initial entry into the United

1 States. The Supreme Court stated that such individuals have no due process rights
2 “other than those afforded by statute.” *Id.* at 107; *see also id.* at 140 (“[A]n alien in
3 respondent’s position has only those rights regarding admission that Congress has
4 provided by statute.”). The Supreme Court noted that its determination was supported
5 by “more than a century of precedent.” *Id.* at 138 (citing *Nishimura Ekiu v. United*
6 *States*, 142 U.S. 651, 660 (1892); *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537,
7 544 (1950); *Mezei*, 345 U.S. at 212; *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)).
8 Because the only process due Petitioner is that afforded under section 1225(b), the
9 Court should reject his claim that his detention violates the Fifth Amendment’s Due
10 Process Clause and deny his requested relief. *See Thuraissigiam*, 591 U.S. at 138–40;
11 *Mendoza-Linares*, 51 F.4th at 1167; *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206
12 (9th Cir. 2022) (“The recognized liberty interests of U.S. citizens and aliens are not
13 coextensive: the Supreme Court has ‘firmly and repeatedly endorsed the proposition
14 that Congress may make rules as to aliens that would be unacceptable if applied to
15 citizens.’”) (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)); *Zelaya-Gonzalez*,
16 2023 WL 3103811, at *4 (“Binding Ninth Circuit and Supreme Court precedents are
17 clear that Petitioner lacks any rights beyond those conferred by statute, and no statute
18 entitles Petitioner to a bond hearing.”).

19 Since the Supreme Court’s decision in *Thuraissigiam*, numerous cases have
20 acknowledged *Thuraissigiam*’s impact on the precise Fifth Amendment Due Process
21 Clause that Petitioner might have raised in this petition: Does an alien detained under
22 8 U.S.C. § 1225(b)(1) have a due process right to release or a bond hearing after being
23 detained for a certain period of time? The answer is no. *See Mendoza-Linares v.*
24 *Garland*, No. 21-cv-1169-BEN (AHG), 2024 WL 3316306, *2 (S.D. Cal. June 10,
25 2024) (“[T]he Court finds that Petitioner has no Fifth Amendment right to a bond
26 hearing pending his removal proceedings.”); *Zelaya-Gonzalez*, 2023 WL 3103811. *3
27 (S.D. Cal. Apr. 25, 2023) (same); *Rodriguez Figueroa v. Garland*, 535 F. Supp. 3d
28 122, 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). Petitioner, therefore, has no due process right to a bond hearing and the Court should deny the petition.

2. Petitioner's detention is not unconstitutionally prolonged.

Even if the Court infers a constitutional right against prolonged mandatory detention, Petitioner's claim still fails in this case. To begin with, he has not been detained beyond a presumptively reasonable period. "In general, as detention continues past a year, courts become extremely wary of permitting continued custody absent a bond hearing." *Sibomana v. LaRose*, No. 22-cv-933-LL-NLS, 2023 WL 3028093, at *4 (S.D. Cal. April 20, 2023) (citation omitted); *see also Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS, 2024 WL 711607, at *5 (S.D. Cal. Feb. 21, 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). Petitioner's 10-month detention falls short of the length courts have found to raise due process concerns. The inquiry should end there.

But even a more nuanced analysis will provide Petitioner no relief. In similar cases, courts in this district assess reasonableness in light of (1) total length of detention to date; (2) likely duration of future detention; (3) conditions of detention; (4) delays in the removal proceedings caused by the detainee; (5) delays in the removal proceedings caused by the government; and (6) the likelihood that the removal proceedings will result in a final order of removal. *Kydyrali v. Wolf*, 499 F. Supp. 3d 768 (S.D. Cal. 2020) (citing *Banda v. McAleenan*, 385 F. Sup. 3d 1099, 1106 (W.D. Wash. 2019)).

First, Petitioner's 10-month detention does not support any relief. The length of detention in *Kydyrali* was 27 months, nearly three times as long as Petitioner's detention. *See Kydyrali*, 499 F. Supp. 3d at 773. The relatively short detention period at issue in this case does not justify habeas relief. *See Prieto-Romero v. Clark*, 534 F.3d

1 1053, 1065 (9th Cir. 2008) (finding no constitutional violation in detention of more
2 than three years under § 1226(a)); *see also Durand v. Allen*, No. 3:23-cv-00279-RBM-
3 BGS, 2024 WL 711607 at *5 (S.D. Cal. Feb. 21, 2024) (32 months); *Sibomana*, 2023
4 WL 3028093, at *4 (19 months); *Sanchez-Rivera*, 2023 WL 139801 at *6 (three years);
5 *Yagao v. Figueroa*, No. 17-CV-2224-AJB-MDD, 2019 WL 1429582, at *1 (S.D. Cal.
6 Mar. 29, 2019) (42 months).

7 Notably, “the length of detention . . . is the most important factor.” *Banda*, 385
8 F. Supp. 3d at 1118. Moreover, the length of Petitioner’s detention, by itself, does not,
9 standing alone, justify granting habeas relief. *See Sadeqi v. LaRose*, No. 25-cv-2587-
10 RSH-BJW, 2025 WL 3154520, at *3 (S.D. Cal. Nov. 12, 2025) (“The Court agrees
11 with Respondents that the length of Petitioner’s detention to date—almost 12 months—
12 does not by itself, without more, establish prolonged detention in violation of due
13 process.”). The first factor thus favors respondents here because the length of detention
14 falls safely within the ballpark of reasonableness.

15 Second, the likely duration of future detention weighs against Petitioner.
16 Detention offends due process in these cases when it is both “arbitrary” and
17 “indefinite.” *See Kydyrali*, 499 F. Supp. 3d at 770–71. *See, e.g., Vargas v. Beth*, 378 F.
18 Supp. 3d 716, 726 (E.D. Wis. 2019) (finding a due process right to a bond hearing
19 where a detainee had been detained for almost ten months without even receiving a
20 hearing date for appeal). Petitioner has already had his hearing before an ALJ, and his
21 appeal is pending. Dkt. 1 at 3. Detention is not arbitrary in this case because it is part
22 of an ongoing removal proceeding. It is not “indefinite” because, although the exact
23 end date is not yet precisely fixed, Petitioner’s appeal will be resolved, after which the
24 question of his removability will be administratively final. This is sufficiently definite.
25 This case is, therefore, unlike cases where detainees remained in uncertain limbo while
26 removal proceedings failed to progress *at all*, and the second factor favors
27 Respondents.
28

Petitioner suggests the third factor (“conditions of confinement”) favors him solely because his confinement is “penal” in nature. Dkt. 14 at 8. But this argument stretches the actual test to the breaking point. In *Banda*, the court noted that, absent any actual evidence about the conditions of confinement, the mere fact of detention in a quasi-penal immigration detention facility was “neutral.” See 385 F. Supp. 3d at 1118. In *Kydrali*, the Court found the conditions of confinement favored Petitioner not *solely* because it was “penal” in nature, but because Petitioner suffered from tuberculosis and chronic pneumonia during the height of the COVID pandemic. 499 F. Supp. 3d at 773. Thus, confinement “in a facility where he has little to no control over his surroundings and limited ability to protect himself from COVID-19 exposure” pushed the “conditions of confinement” factor in his favor. *Id.* This case presents no such extenuating circumstances. The Petition is supported only by the unsworn representations of counsel about the conditions of confinement. See Dkt. 14 at 7–8. But, even if credited, counsel has done little more than describe ordinary confinement in a civil detention facility. If that were sufficient, then every person detained would have this factor on his side, and the third prong of the test would be useless. Under *Banda* and *Kydrali*, this factor is neutral at best for this case.

The fourth and fifth factors (delays in the removal proceedings caused by Petitioner and the government) are neutral here because the record does not show either party has delayed removal proceedings.

The sixth and final factor weighs in favor of Respondents because, as in *Kydrali*, an immigration judge has entered a removal order against Petitioner, which Petitioner has appealed to the BIA. See 499 F. Supp. 3d at 773–74. This case differs from, for example, *Abdul Kadir*, 2025 WL 2932654, at *5, where the Petitioner had already *prevailed* on his asylum claim, and the *government* faced the uphill battle of successfully overturning the immigration judge’s order. Here, counsel asserts she has seen the appeal and Petitioner is “likely” to win because he argues the IJ made error. But every appellant argues trial error. Because the touchstone for a case like this is

1 “does the Petitioner have a realistic shot at overturning the IJ on appeal,” Petitioner
2 must do more than simply assert he has appealed. This factor, accordingly, favors
3 Respondents, who have the greater likelihood of prevailing on appeal.

4 Three of the six factors thus favor Respondents. The other three are neutral at
5 best. Balancing these factors, the record does not support a finding that “detention has
6 become so unreasonable as to require an initial bond hearing.” *See Sanchez-Rivera*,
7 2023 WL 139801, at *6. Petitioner was lawfully detained when he applied for
8 admission to the United States. As a result, Petitioner is rightly considered an applicant
9 for admission, and his mandatory detention does not violate due process. *See Markov*
10 *v. LaRose*, No. 25-CV-3811 JLS (SBC), 2026 WL 92069 (S.D. Cal. Jan. 13, 2026)
11 (“Petitioner’s length of detention, without more, does not render his detention
12 unreasonable.”); *Duran Romero v. LaRose*, No. 25-cv-3567-AGS-VET, ECF No. 7
13 (S.D. Cal. Jan. 14, 2026); *Shahin v. Noem*, No. 25-cv-2496-AGS-KSC, ECF No. 12
14 (S.D. Cal. Dec. 23, 2025); *Cordova Cordova*, No. 25-cv-2426-BAS-DDL, ECF No. 9
15 (S.D. Cal. Nov. 14, 2025); *Mendez Ramirez*, 612 F. Supp. 3d at 221; *Gonzalez Aguilar*
16 *v. Wolf*, 448 F. Supp. 3d at 1212; *de la Rosa Espinoza*, 2020 WL 3452967, at *6-8. The
17 Court should deny the Petition.

18 V. CONCLUSION

19 Petitioner has received the process afforded to him by Congress. The Constitution
20 permits his continued detention. Respondents respectfully request the Court dismiss this
21 petition for lack of jurisdiction or deny it on the merits.

22 Dated: July 20, 2026

Respectfully submitted,

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