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

ABEBE ALEMNEW MENGISTU,

Petitioner,

v.

PATRICK DIVVER, *et al.*,

Respondents.

Case No.: 26-cv-03667-AGS-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, which are ongoing as Petitioner has appealed his removal order. Accordingly, the Court should deny Petitioner's request for relief.

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a native and citizen of Ethiopia, who entered the United States without inspection near the Otay Mesa Port of Entry, on September 8, 2025. *See* Exhibit 1 (Form I-213).¹ Petitioner did not then have any valid entry documents to enter the United States. *Id.* 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 1 (Form I-213). 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 by an asylum officer, Petitioner was issued a Notice to Appear (NTA). Exhibit 2 (NTA). 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. Within those proceedings, after DHS filed a motion to pretermite, an IJ ordered Petitioner removed from the United States to Uganda. *See* Exhibit 3 (Removal Order). Petitioner has filed an appeal of that order to the Board of Immigration Appeals, and those proceedings remain pending. As a result, there is no administratively final order of removal currently. 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

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

1 U.S.C. § 1225(a)(1). “[A]pplicants for admission fall into one of two categories, those
2 covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings v. Rodriguez*,
3 583 U.S. 281, 287 (2018).

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

16 IV. ARGUMENT

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

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

22 Here, Petitioner’s claims of unlawful detention necessarily arise from the
23 Department of Homeland Security’s² decision to commence removal proceedings
24 against him because that decision unavoidably triggers mandatory detention under 8
25 U.S.C. § 1225(b)(1)(B)(ii) until the conclusion of his removal proceedings. *See, e.g.,*

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 *Wang v. United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at *6 (C.D.
2 Cal. Aug. 18, 2010) (finding section 1252(g) bars judicial review of false imprisonment
3 claim because the plaintiff's detention arose from the decision to commence removal
4 proceedings, and in turn, the "statute mandating detention during removal proceedings
5 of a person charged as an 'arriving alien.'").

6 As explained by another district court, removal proceedings are commenced
7 when, as occurred here, "the alien is issued a Notice to Appear before an immigration
8 court." *Herrera-Correra v. United States*, No. CV 08-2941 DSF (JCx), 2008 WL
9 11336833, at *3 (C.D. Cal. Sept. 11, 2008); *see also* Exhibit 2 (Notice to Appear). The
10 government "may arrest the alien against whom proceedings are commenced and detain
11 that individual until the conclusion of those proceedings." *Herrera-Correra*, 2008 WL
12 11336833, at *3. "Thus, an alien's detention throughout this process arises from the
13 [government's] decision to commence proceedings" and review of claims arising from
14 such detention is barred under section 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d
15 947, 949 (9th Cir. 2007)); *see also Wang*, 2010 WL 11463156, at *6.

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

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

20 Even if the Court assumed jurisdiction to review Petitioner's claim, the Court
21 must deny his habeas petition because Petitioner's detention is statutorily mandated
22 under 8 U.S.C. § 1225(b)(1)(B)(ii) and has not been unconstitutionally prolonged.

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

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

1 1225(b)(2).” *Jennings*, 583 U.S. at 287. Section 1225(b)(1) – the provision relevant
2 here – applies because Petitioner was found in the United States without proper
3 documents authorizing his presence. And that statute mandates detention when an
4 immigration officer determines that the alien has a credible fear of persecution. *See* 8
5 U.S.C. § 1225(b)(1)(B)(ii) (“If the officer determines at the time of the interview that
6 [the] alien has a credible fear of persecution . . . , the alien *shall be detained* for further
7 consideration of the application for asylum.”) (emphasis added); *see also Matter of M-*
8 *S*, 27 I. & N. Dec. 509, 519 (AG 2019) (“all aliens transferred from expedited to full
9 [removal] proceedings after establishing a credible fear are ineligible for bond”).

10 Petitioner requests that the Court order him released from ICE custody. But the
11 Supreme Court has rejected such contention, explaining: “Read most naturally,
12 §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until
13 certain proceedings have concluded. . . . Nothing in the statutory text imposes any limit
14 on the length of detention. And neither § 1225(b)(1) nor § 1225(b)(2) says anything
15 whatsoever about bond hearings.” *Jennings*, 583 U.S. at 297. Except for temporary
16 parole granted at the discretion of the Attorney General “for urgent humanitarian
17 reasons or significant public benefit” under 8 U.S.C. § 1182(d)(5), “there are no *other*
18 circumstances under which aliens detained under § 1225(b) may be released.” *Id.* at 300
19 (emphasis in original).

20 As Petitioner’s removal proceedings are pending, and he has not been granted
21 temporary parole, section 1225(b)(1)(B) mandates his detention until the proceedings
22 have concluded. *Jennings*, 583 U.S. at 297 (“Once those proceedings end, detention
23 under § 1225(b) must end as well.”). Because Petitioner is lawfully detained under
24 section 1225(b)(1)(B) and the statute does not entitle him to release at this time, his
25 petition must be denied. *See, e.g., Zelaya-Gonzalez v. Matuszewski*, No. 23-CV-151
26 JLS-KSC, 2023 WL 3103811, at *3 (S.D. Cal. April 25, 2023) (applying *Jennings* to
27 find that the petitioner had no right to release or a bond hearing).

28 ///

1 **2. Petitioner’s detention is not unconstitutionally prolonged.**

2 In *Jennings*, the Supreme Court evaluated the proper interpretation of 8 U.S.C. §
3 1225(b). The Supreme Court stated that, “[r]ead most naturally, [8 U.S.C.]
4 §§ 1225(b)(1) and (b)(2) . . . mandate detention of applicants for admission until certain
5 proceedings have concluded.” *Id.* at 297. In other words, neither 8 U.S.C. § 1225(b)(1)
6 nor § 1225(b)(2) “impose[] any limit on the length of detention” and “neither
7 § 1225(b)(1) nor § 1225(b)(2) say[] anything whatsoever about bond hearings.” *Id.* The
8 Supreme Court added that the sole means of release for noncitizens detained pursuant
9 to 8 U.S.C. §§ 1225(b)(1) or (b)(2) prior to removal from the United States is temporary
10 parole at the discretion of the Attorney General under 8 U.S.C. § 1182(d)(5). *Id.* at 300
11 (“That express exception to detention implies that there are no *other* circumstances
12 under which aliens detained under [8 U.S.C.] § 1225(b) may be released.”) (emphasis
13 in original). “In sum, [8 U.S.C.] §§ 1225(b)(1) and (b)(2) mandate detention of aliens
14 throughout the completion of applicable proceedings[.]” *Id.* at 302.

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

23 In *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 138–40
24 (2020), the Supreme Court once again addressed the due process rights of inadmissible
25 arriving noncitizens seeking initial entry into the United States. The Supreme Court
26 stated that such individuals have no due process rights “other than those afforded by
27 statute.” *Id.* at 107; *see also id.* at 140 (“[A]n alien in respondent’s position has only
28 those rights regarding admission that Congress has provided by statute.”). The

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

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

1 Even if the Court infers a constitutional right against prolonged mandatory
2 detention, Petitioner's claim still fails. "In general, as detention continues past a year,
3 courts become extremely wary of permitting continued custody absent a bond hearing."
4 *Sibomana v. LaRose*, No. 22-cv-933-LL-NLS, 2023 WL 3028093, at *4 (S.D. Cal.
5 April 20, 2023) (citation omitted); *see also Durand v. Allen*, No. 3:23-cv-00279-RBM-
6 BGS, 2024 WL 711607, at *5 (S.D. Cal. Feb. 21, 2024) (detained over two-and-a-half
7 years); *Sanchez-Rivera v. Matuszewski*, No. 22-cv-1357-MMA (JLB), 2023 WL
8 139801, at *6 (S.D. Cal. Jan. 9, 2023) (three years); *Yagao v. Figueroa*,
9 No. 17-cv-2224-AJB-MDD, 2019 WL 1429582, at *2 (S.D. Cal. March 29, 2019) (two
10 years). Petitioner's detention, detained for less than a year, falls significantly short of
11 the length courts have found to raise due process concerns.

12 In similar cases, courts in this district have applies the test in *Banda v.*
13 *McAleenan*, 385 F. Sup. 3d 1099, 1106 (W.D. Wash. 2019), first adopted by Judge
14 Battaglia in *Kydyrali v. Wolf*, 499 F. Supp. 3d 768 (S.D. Cal. 2020). Under *Banda*, to
15 determine whether continued mandatory detention has become unreasonable, courts
16 look at (1) total length of detention to date; (2) likely duration of future detention; (3)
17 conditions of detention; (4) delays in the removal proceedings caused by the detainee;
18 (5) delays in the removal proceedings caused by the government; and (6) the likelihood
19 that the removal proceedings will result in a final order of removal. *Banda*, 385 F. Sup.
20 3d at 1106.

21 First, Petitioner's approximate 10-month detention should not favor granting his
22 release. The length of detention in *Kydyrali* was 27 months, two times as long as
23 Petitioner's detention. *See Kydyrali*, 499 F. Supp. 3d at 773. This relatively short
24 duration does not justify habeas relief. *See Prieto-Romero v. Clark*, 534 F.3d 1053,
25 1065 (9th Cir. 2008) (finding no constitutional violation in detention of more than three
26 years under § 1226(a)); *see also Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS, 2024
27 WL 711607 at *5 (S.D. Cal. Feb. 21, 2024) (32 months); *Sibomana*, 2023 WL
28 3028093, at *4 (19 months); *Sanchez-Rivera*, 2023 WL 139801 at *6 (three years);

1 *Yagao v. Figueroa*, No. 17-CV-2224-AJB-MDD, 2019 WL 1429582, at *1 (S.D. Cal.
2 Mar. 29, 2019) (42 months).

3 Notably, “the length of detention . . . is the most important factor.” *Banda*, 385
4 F. Supp. 3d at 1118. In short, the period of Petitioner’s detention is reasonable.
5 Moreover, the length of Petitioner’s detention, by itself, does not favor granting habeas
6 relief. *See Sadeqi v. LaRose*, No. 25-cv-2587-RSH-BJW, 2025 WL 3154520, at *3
7 (S.D. Cal. Nov. 12, 2025) (“The Court agrees with Respondents that the length of
8 Petitioner’s detention to date—almost 12 months—does not by itself, without more,
9 establish prolonged detention in violation of due process.”).

10 Second, the likely duration of future detention weighs against Petitioner.
11 Petitioner was ordered removed to Uganda on March 10, 2026. While Petitioner has
12 appealed that decision to the BIA, any length of detention concerning the appeal
13 process is purely speculative. The fourth and fifth factors (delays in the removal
14 proceedings caused by Petitioner and the government) are neutral, as the record does
15 not evidence any delays in removal proceedings. The sixth and final factor weighs in
16 favor of Respondents because an immigration judge has entered a removal order
17 against Petitioner, which Petitioner has appealed to the BIA

18 Balancing the above factors, the record does not support a finding that “detention
19 has become so unreasonable as to require an initial bond hearing,” *Sanchez-Rivera*,
20 2023 WL 139801, at *6, or an order requiring Petitioner’s release.

21 Accordingly, Petitioner is subject to mandatory detention, which does not violate
22 due process. *See Markov v. LaRose*, No. 25-CV-3811 JLS (SBC), 2026 WL 92069 (S.D.
23 Cal. Jan. 13, 2026) (“Petitioner’s length of detention, without more, does not render his
24 detention unreasonable.”); *Duran Romero v. LaRose*, No. 25-cv-3567-AGS-VET, ECF
25 No. 7 (S.D. Cal. Jan. 14, 2026); *Shahin v. Noem*, No. 25-cv-2496-AGS-KSC, ECF No.
26 12 (S.D. Cal. Dec. 23, 2025); *Cordova Cordova*, No. 25-cv-2426-BAS-DDL, ECF No.
27 9 (S.D. Cal. Nov. 14, 2025); *Mendez Ramirez*, 612 F. Supp. 3d at 221; *Gonzalez Aguilar*
28 *v. Wolf*, 448 F. Supp. 3d at 1212; *de la Rosa Espinoza*, 2020 WL 3452967, at *6-8.

V. CONCLUSION

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

Dated: July 1, 2026

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