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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 ABDUL NASIR MORO,

12 Petitioner,
13

14 v.

15 JEREMY CASEY, Warden at Imperial
16 Regional Detention Facility; *et al.*,

17 Respondents.
18

Case No.:26-cv-03741-LL-AHG

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

19
20
21 **I. INTRODUCTION**

22
23 Petitioner has filed an amended habeas petition under 28 U.S.C. § 2241.
24 Petitioner requests the Court to order his immediate release from Immigration and
25 Customs Enforcement (ICE) custody. As an arriving alien and applicant for admission,
26 however, Petitioner's detention is mandated by 8 U.S.C. § 1225(b)(2) until the
27 conclusion of his removal proceedings. Accordingly, the Court should deny Petitioner's
28 requests for relief.

II. FACTUAL AND PROCEDURAL BACKGROUND

The following facts represent an accurate record of Petitioner's immigration history and recent encounter with Immigration and Customs Enforcement (ICE). Petitioner is a native and citizen of Ghana. Petitioner initially entered the United States near Otay Mesa, California on or about October 6, 2023. See Exhibit 1 (Form I-213).¹ Petitioner was issued a Notice to Appear (NTA) and released on his own recognizance on October 10, 2023. See *id.*; Exhibit 2 (NTA and Order of Release on Recognizance).

On March 2, 2026, Petitioner departed the United States and arrived in Canada to claim asylum. See Exhibit 1. Canadian Customs and Border Services determined Petitioner did not have legal status in their country and returned Petitioner to U.S. Customs and Border Protection Officers in Champlain, New York. *Id.* Since Petitioner was in Canada and returned to the U.S. at the Champlain port of entry without any legal documentation to enter the United States, Petitioner is an arriving alien and inadmissible under 8 U.S.C. § 1182(a). Accordingly, he was taken into custody pursuant to 8 U.S.C. § 1225(b). As Petitioner's removal proceedings were still ongoing, DHS did not initiate expedited removal proceedings or issue a new NTA to Petitioner, and the government instead determined to detain Petitioner under his removal proceedings initiated by the NTA issued on October 10, 2023. *Id.*; Exhibit 2.

As indicated above, Petitioner was not released on humanitarian parole pursuant to 8 U.S.C. § 1182(d)(5) as he claims in his amended petition. See generally ECF No. 8. Even if he was, Petitioner would have *automatically* terminated such parole when he departed the United States. See 8 C.F.R. § 212.5(e)(1)(i) ("Parole shall be automatically terminated without written notice ... upon the departure from the United States of the alien..."). And since Petitioner was released from immigration custody under *conditional* parole issued under 8 U.S.C. § 1226(a), Petitioner relinquished any alleged correlating entitlement when he departed the United States. Either way, Respondents

¹ The attached exhibits are true copies, with redactions of private information, of documents obtained from ICE counsel.

were not required to provide notice to Petitioner because he departed the United States and then presented himself for entry. *See Gao v. LaRose*, 805 F. Supp. 3d 1106 (S.D. Cal. Sept. 26, 2025) (finding petitioner subject to mandatory detention under § 1225 where petitioner was previously paroled into the United States under 8 U.S.C. § 1182(d)(5) but then unintentionally crossed into Mexico and then applied for reentry into the United States); *Svenin v. Casey*, No. 25-cv-1865-CAB-KSC, 2025 WL 2917319 (S.D. Cal. Oct. 14, 2025) (same).

On July 14, 2026, Petitioner’s individual merits hearing took place. *See* Exhibit 3 (Order of the Immigration Judge). The immigration judge denied Petitioner’s applications for relief² and ordered Petitioner removed to Ghana. *Id.* Petitioner reserved appeal and has until August 13, 2026 to perfect an appeal to the Board of Immigration Appeals (BIA). *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)(2)(A).

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

² Within Petitioner’s removal proceedings, Petitioner applied for asylum and his application was pending at the time he departed the United States.

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 application
 4 for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii) (emphasis added). If the alien does not
 5 indicate an intent to apply for asylum, does not express a fear of persecution, or is
 6 “found not to have such a fear,” they “shall be detained . . . until removed” from the
 7 United States. 8 U.S.C. §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

8 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*,
 9 583 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).”
 10 *Id.* Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained
 11 for a removal proceeding “if the examining immigration officer determines that [the]
 12 alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8
 13 U.S.C. § 1225(b)(2)(A); *Matter of Q. Li*, 29 I&N Dec. 66, 68 (BIA 2025) (“for aliens
 14 arriving in and seeking admission into the United States who are placed directly in full
 15 removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A),
 16 mandates detention ‘until removal proceedings have concluded.’”) (citing *Jennings*,
 17 583 U.S. at 299). However, DHS has the sole discretionary authority to temporarily
 18 release on parole “any alien applying for admission to the United States” on a “case-by-
 19 case basis for urgent humanitarian reasons or significant public benefit.” *Id.* §
 20 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

21 IV. ARGUMENT

22 As an initial matter, Petitioner’s habeas petition should be denied because 28
 23 U.S.C. § 1252(g) bars judicial review over his claim, and because he is lawfully
 24 detained under the INA and the Constitution.

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

26 Respondents contend that judicial review over Petitioner’s claim is barred by 28
 27 U.S.C. § 1252(g), which states that “[n]o court shall have jurisdiction to hear any cause
 28

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’s³ decision to commence removal proceedings
5 against him because that decision unavoidably triggers mandatory detention under 8
6 U.S.C. § 1225(b)(2) until the conclusion of his removal proceedings. *See, e.g., Wang v.*
7 *United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at *6 (C.D. Cal. Aug.
8 18, 2010) (finding section 1252(g) bars judicial review of false imprisonment claim
9 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 2 (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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26 _____
27 ³ “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)(2)(A).

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

Petitioner’s claim fails because he is subject to mandatory detention under 8 U.S.C. § 1225(b)(2). 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)(2)(A) requires mandatory detention of “an alien who is *an applicant for admission*, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted[.]” *Chavez v. Noem*, No. 3:25-cv-02325, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24, 2025) (quoting 8 U.S.C. § 1225(b)(2)(A)) (emphasis in original). Petitioner contends that he is entitled to release. 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* circumstances under which aliens detained under § 1225(b) may be released.” *Id.* at 300 (emphasis in original).

As Petitioner’s removal proceedings are pending, and he was never granted temporary parole under 8 U.S.C. § 1182(d)(5), section 1225(b)(2) mandates his detention until the proceedings have concluded. *Jennings*, 583 U.S. at 297 (“Once those

proceedings end, detention under § 1225(b) must end as well.”). Because Petitioner is lawfully detained under section 1225(b)(2) and the statute does not entitle him to release or to a bond hearing at this time, his petition must be denied. *See, e.g., Zelaya-Gonzalez v. Matuszewski*, No. 23-CV-151 JLS-KSC, 2023 WL 3103811, at *3 (S.D. Cal. April 25, 2023) (applying *Jennings* to find that the petitioner had no right to release or a bond hearing).

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

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

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

1 In *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 138–40
 2 (2020), the Supreme Court once again addressed the due process rights of individuals
 3 like Petitioner—inadmissible arriving noncitizens seeking initial entry into the United
 4 States. The Supreme Court stated that such individuals have no due process rights “other
 5 than those afforded by statute.” *Id.* at 107; *see also id.* at 140 (“[A]n alien in
 6 respondent’s position has only those rights regarding admission that Congress has
 7 provided by statute.”). The Supreme Court noted that its determination was supported
 8 by “more than a century of precedent.” *Id.* at 138 (citing *Nishimura Ekiu v. United*
 9 *States*, 142 U.S. 651, 660 (1892); *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544
 10 (1950); *Mezei*, 345 U.S. at 212; *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)). Because
 11 the only process due Petitioner is that afforded under section 1225(b), the Court must
 12 reject her claim that her detention violates the Fifth Amendment’s Due Process Clause
 13 and deny her requested relief. *See Thuraissigiam*, 591 U.S. at 138–40; *Mendoza-*
 14 *Linares*, 51 F.4th at 1167; *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir.
 15 2022) (“The recognized liberty interests of U.S. citizens and aliens are not coextensive:
 16 the Supreme Court has ‘firmly and repeatedly endorsed the proposition that Congress
 17 may make rules as to aliens that would be unacceptable if applied to citizens.’”) (quoting
 18 *Demore v. Kim*, 538 U.S. 510, 522 (2003)); *Zelaya-Gonzalez*, 2023 WL 3103811, at *4
 19 (“Binding Ninth Circuit and Supreme Court precedents are clear that Petitioner lacks
 20 any rights beyond those conferred by statute, and no statute entitles Petitioner to a bond
 21 hearing.”).

22 Since the Supreme Court’s decision in *Thuraissigiam*, numerous published
 23 decisions have acknowledged *Thuraissigiam*’s impact on the precise Fifth Amendment
 24 Due Process Clause that Petitioner might have raised in this petition: Does an alien
 25 detained under 8 U.S.C. § 1225(b)(1) have a due process right to release or a bond
 26 hearing after being detained for a certain period of time? The answer is no. *See*
 27 *Mendoza-Linares v. Garland*, No. 21-cv-1169-BEN (AHG), 2024 WL 3316306, *2
 28 (S.D. Cal. June 10, 2024) (“[T]he Court finds that Petitioner has no Fifth Amendment

1 right to a bond hearing pending his removal proceedings.”); *Zelaya-Gonzalez*, 2023 WL
2 3103811, *3 (S.D. Cal. Apr. 25, 2023) (same); *Rodriguez Figueroa v. Garland*, 535 F.
3 Supp. 3d 122, 126–27 (W.D.N.Y. 2021); *Gonzales Garcia v. Rosen*, 513 F. Supp. 3d
4 329, 336 (W.D.N.Y. 2021); *St. Charles v. Barr*, 514 F. Supp. 3d 570, 579 (W.D.N.Y.
5 2021); *Petgrave v. Aleman*, 529 F. Supp. 3d 665, 667 (S.D. Tex. 2021).

6 Even if the Court infers a constitutional right against prolonged mandatory
7 detention, Petitioner’s claim still fails. “In general, as detention continues past a year,
8 courts become extremely wary of permitting continued custody absent a bond hearing.”
9 *Sibomana v. LaRose*, No. 22-cv-933-LL-NLS, 2023 WL 3028093, at *4 (S.D. Cal.
10 April 20, 2023) (citation omitted); *see also Durand v. Allen*, No. 3:23-cv-00279-RBM-
11 BGS, 2024 WL 711607, at *5 (S.D. Cal. Feb. 21, 2024) (detained over two-and-a-half
12 years); *Sanchez-Rivera v. Matuszewski*, No. 22-cv-1357-MMA (JLB), 2023 WL
13 139801, at *6 (S.D. Cal. Jan. 9, 2023) (three years); *Yagao v. Figueroa*,
14 No. 17-cv-2224-AJB-MDD, 2019 WL 1429582, at *2 (S.D. Cal. March 29, 2019) (two
15 years). Petitioner’s detention falls significantly short of the length courts have found to
16 raise due process concerns.

17 In similar cases, courts in this district have applies the test in *Banda v.*
18 *McAleenan*, 385 F. Sup. 3d 1099, 1106 (W.D. Wash. 2019), first adopted by Judge
19 Battaglia in *Kydyrali v. Wolf*, 499 F. Supp. 3d 768 (S.D. Cal. 2020). Under *Banda*, to
20 determine whether continued mandatory detention has become unreasonable, courts
21 look at (1) total length of detention to date; (2) likely duration of future detention; (3)
22 conditions of detention; (4) delays in the removal proceedings caused by the detainee;
23 (5) delays in the removal proceedings caused by the government; and (6) the likelihood
24 that the removal proceedings will result in a final order of removal. *Banda*, 385 F. Sup.
25 3d at 1106.

26 First, Petitioner’s approximate four-month detention should not favor granting
27 his release. The length of detention in *Kydyrali* was 27 months, nearly seven times as
28 long as Petitioner’s detention. *See Kydyrali*, 499 F. Supp. 3d at 773. This relatively short

1 duration does not justify habeas relief. *See Prieto-Romero v. Clark*, 534 F.3d 1053, 1065
2 (9th Cir. 2008) (finding no constitutional violation in detention of more than three years
3 under § 1226(a)); *see also Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS, 2024 WL
4 711607 at *5 (S.D. Cal. Feb. 21, 2024) (32 months); *Sibomana*, 2023 WL 3028093, at
5 *4 (19 months); *Sanchez-Rivera*, 2023 WL 139801 at *6 (three years); *Yagao v.*
6 *Figueroa*, No. 17-CV-2224-AJB-MDD, 2019 WL 1429582, at *1 (S.D. Cal. Mar. 29,
7 2019) (42 months).

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

15 Second, the likely duration of future detention weighs against Petitioner.
16 Petitioner’s individual merits hearing recently took place, in which an immigration
17 judge ordered him removed to Ghana. *See* Exhibit 3. Petitioner has until August 13,
18 2026 to appeal the removal order to the BIA. *Id.* If he doesn’t appeal, his path to removal
19 will be clear. Any length of detention after that point is purely speculative. The third
20 factor weighs in favor of Respondents because Petitioner has not provided any evidence
21 that his detention resembles penal confinement. The fourth and fifth factors (delays in
22 the removal proceedings caused by Petitioner and the government) are neutral, as the
23 record does not evidence any delays in removal proceedings. Arguably, Petitioner’s
24 removal proceedings were accelerated by his departure and re-entry into the United
25 States because his case was moved to the detained docket. The sixth and final factor
26 weighs in favor of Respondents because an immigration judge has entered a removal
27 order against Petitioner, which Petitioner has yet to appeal to the BIA.

28 Balancing the above factors, the record does not support a finding that “detention

1 has become so unreasonable as to require an initial bond hearing,” *Sanchez-Rivera*,
2 2023 WL 139801, at *6, or an order requiring Petitioner’s release.

3 Petitioner was lawfully detained when he departed and reapplied for admission
4 to the United States. As a result, Petitioner is rightly considered an applicant for
5 admission, and his mandatory detention does not violate due process. *See Markov v.*
6 *LaRose*, No. 25-CV-3811 JLS (SBC), 2026 WL 92069 (S.D. Cal. Jan. 13, 2026)
7 (“Petitioner’s length of detention, without more, does not render his detention
8 unreasonable.”); *Duran Romero v. LaRose*, No. 25-cv-3567-AGS-VET, ECF No. 7
9 (S.D. Cal. Jan. 14, 2026); *Shahin v. Noem*, No. 25-cv-2496-AGS-KSC, ECF No. 12
10 (S.D. Cal. Dec. 23, 2025); *Cordova Cordova*, No. 25-cv-2426-BAS-DDL, ECF No. 9
11 (S.D. Cal. Nov. 14, 2025); *Mendez Ramirez*, 612 F. Supp. 3d at 221; *Gonzalez Aguilar*
12 *v. Wolf*, 448 F. Supp. 3d at 1212; *de la Rosa Espinoza*, 2020 WL 3452967, at *6-8.

13 V. CONCLUSION

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

16
17 Dated: July 22, 2026

Respectfully submitted,

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