

ADAM GORDON
United States Attorney
HUNTER V. NORTON
Assistant United States Attorney
Washington, D.C. Bar No. 1780736
Office of the U.S. Attorney
880 Front Street, Room 6293
San Diego, CA 92101-8893
Telephone: (619) 546-8592
Email: Hunter.Norton2@usdoj.gov

Attorneys for Respondents

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

BIN IBRAHIM,

Petitioner,

v.

TODD BLANCHE, Acting Attorney
General of the United States; *et al.*,

Respondents.

Case No.: 26-cv-03847-LL-DDL

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

1
2 **I. INTRODUCTION**

3 Petitioner requests the Court to order his immediate release from Immigration
4 and Customs Enforcement (ICE) custody or require that he be afforded a bond hearing.
5 However, Petitioner's detention is mandated by 8 U.S.C. § 1225(b)(2) until the
6 conclusion of his removal proceedings. Accordingly, the Court should deny
7 Petitioner's requests for relief.

8 **II. FACTUAL AND PROCEDURAL BACKGROUND**

9 Petitioner, a native and citizen of Ghana, first entered the United States
10 unlawfully near San Luis, Arizona, on May 24, 2023. *See* Exhibit 1 at 1 (2023 Form I-
11 213).¹ Petitioner was apprehended by U.S. Border Patrol agents, determined to be
12 inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i)(I) and taken into Immigration and
13 Customs Enforcement (ICE) custody pursuant to 8 U.S.C. § 1225(b). *See* ECF No 1
14 (Petition) at 1-4. He was then issued a Notice to Appear (NTA). Exhibit 2. The filing of
15 the NTA initiated removal proceedings, pursuant to 8 U.S.C. § 1229a, against
16 Petitioner. Petitioner was then released from immigration custody by DHS on
17 conditional parole (OREC) under 1226(a). *See* Exhibit 3 (Order of Release on
18 Recognizance).

19 On January 2, 2026, Petitioner was apprehended by U.S. Border Patrol agents
20 again after he admitted to unlawfully entering the United States from Canada; Petitioner
21 was transferred to Immigration and Customs Enforcement (ICE) custody on January
22 24, 2026, and detained pursuant to 8 U.S.C. § 1225(b) pending his ongoing immigration
23 proceedings. *See* Exhibit 4 (2026 Form I-213) at 3, 5. On March 18, 2026, an
24 immigration judge denied all claims for relief and ordered Petitioner removed to
25 Uganda. *See* Exhibit 5 (IJ Order) at 5. Petitioner reserved appeal and briefing was
26 submitted to the Board of Immigration Appeals (BIA) on June 22, 2026. *See* ECF No.

27
28 ¹ The attached exhibits are true copies, with redactions of private information, of documents obtained from Immigration and Customs Enforcement (ICE) counsel.

1 (Petition) at ¶ 23. Under 8 U.S.C. § 1225(b)(2), Petitioner’s detention is mandatory while his appeal is pending before the BIA.

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).

Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.* Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained for a removal proceeding “if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A); *Matter of Q. Li*, 29 I&N Dec. 66, 68 (BIA 2025) (“for aliens arriving in and seeking admission into the United States who are placed

1 directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. §
2 1225(b)(2)(A), mandates detention ‘until removal proceedings have concluded.’”
3 (citing *Jennings*, 583 U.S. at 299). However, DHS has the sole discretionary authority
4 to temporarily release on parole “any alien applying for admission to the United States”
5 on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.”
6 *Id.* § 1182(d)(5)(A); see *Biden v. Texas*, 597 U.S. 785, 806 (2022).

7 IV. ARGUMENT

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

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

13 Here, Petitioner’s claims of unlawful detention necessarily arise from the
14 Department of Homeland Security’s² decision to commence removal proceedings
15 against him because that decision unavoidably triggers mandatory detention under 8
16 U.S.C. § 1225(b)(2) until the conclusion of his removal proceedings. See, e.g., *Wang v.*
17 *United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at *6 (C.D. Cal. Aug.
18 18, 2010) (finding section 1252(g) bars judicial review of false imprisonment claim
19 because the plaintiff’s detention arose from the decision to commence removal
20 proceedings, and in turn, the “statute mandating detention during removal proceedings
21 of a person charged as an ‘arriving alien.’”).

22 As explained by another district court, removal proceedings are commenced
23 when, as occurred here, “the alien is issued a Notice to Appear before an immigration
24 court.” *Herrera-Correra v. United States*, No. CV 08-2941 DSF (JCx), 2008 WL
25 11336833, at *3 (C.D. Cal. Sept. 11, 2008); see also Exhibit 3 (Notice to Appear). The

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

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

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

11 Even if the Court assumed jurisdiction to review Petitioner’s claim, the Court
12 must deny his habeas petition because Petitioner’s detention is statutorily mandated
13 under 8 U.S.C. § 1225(b)(2)(A).

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

15 Petitioner’s claim fails because he is subject to mandatory detention under 8
16 U.S.C. § 1225(b)(2). Under 8 U.S.C. § 1225(a)(1), an “applicant for admission” is
17 defined as an “alien present in the United States who has not been admitted or who
18 arrives in the United States.” As explained above, applicants for admission “fall into
19 one of two categories, those covered by § 1225(b)(1) and those covered by §
20 1225(b)(2).” *Jennings*, 583 U.S. at 287.

21 Section 1225(b)(2)(A) requires mandatory detention of “an alien who is *an*
22 *applicant for admission*, if the examining immigration officer determines that an alien
23 seeking admission is not clearly and beyond a doubt entitled to be admitted[.]” *Chavez*
24 *v. Noem*, No. 3:25-cv-02325, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24, 2025)
25 (quoting 8 U.S.C. § 1225(b)(2)(A)) (emphasis in original). Petitioner contends that he
26 is entitled to a bond hearing. But the Supreme Court has rejected such contention,
27 explaining: “Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of
28 applicants for admission until certain proceedings have concluded. . . . Nothing in the

1 statutory text imposes any limit on the length of detention. And neither § 1225(b)(1)
2 nor § 1225(b)(2) says anything whatsoever about bond hearings.” *Jennings*, 583 U.S. at
3 297. Except for temporary parole granted at the discretion of the Attorney General “for
4 urgent humanitarian reasons or significant public benefit” under 8 U.S.C. § 1182(d)(5),
5 “there are no *other* circumstances under which aliens detained under § 1225(b) may be
6 released.” *Id.* at 300 (emphasis in original).

7 As Petitioner’s appeal is pending, and he has not been granted temporary parole
8 after he was apprehended by Border Patrol the second time, section 1225(b)(2)
9 mandates his detention until the proceedings have concluded. *Jennings*, 583 U.S. at 297
10 (“Once those proceedings end, detention under § 1225(b) must end as well.”). Because
11 Petitioner is lawfully detained under section 1225(b) and the statute does not entitle him
12 to a bond hearing at this time, his petition must be denied. *See, e.g., Zelaya-Gonzalez v.*
13 *Matuszewski*, No. 23-CV-151 JLS-KSC, 2023 WL 3103811, at *3 (S.D. Cal. April 25,
14 2023) (applying *Jennings* to find that the petitioner had no right to release or a bond
15 hearing under 1225(b)(1) because “[b]inding Ninth Circuit and Supreme Court
16 precedents are clear that Petitioner lacks any rights beyond those conferred by statute,
17 and no statute entitles Petitioner to a bond hearing”).

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

19 In *Jennings*, the Supreme Court evaluated the proper interpretation of 8 U.S.C.
20 § 1225(b). The Supreme Court stated that, “[r]ead most naturally, [8 U.S.C.]
21 §§ 1225(b)(1) and (b)(2) . . . mandate detention of applicants for admission until certain
22 proceedings have concluded.” *Id.* at 297. In other words, neither 8 U.S.C. § 1225(b)(1)
23 nor § 1225(b)(2) “impose[] any limit on the length of detention” and “neither
24 § 1225(b)(1) nor § 1225(b)(2) say[] anything whatsoever about bond hearings.” *Id.* The
25 Supreme Court added that the sole means of release for noncitizens detained pursuant
26 to 8 U.S.C. §§ 1225(b)(1) or (b)(2) prior to removal from the United States is temporary
27 parole at the discretion of the Attorney General under 8 U.S.C. § 1182(d)(5). *Id.* at 300
28 (“That express exception to detention implies that there are no *other* circumstances

1 under which aliens detained under [8 U.S.C.] § 1225(b) may be released.”) (emphasis
2 in original). “In sum, [8 U.S.C.] §§ 1225(b)(1) and (b)(2) mandate detention of aliens
3 throughout the completion of applicable proceedings[.]” *Id.* at 302.

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

12 In *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 138–40
13 (2020), the Supreme Court once again addressed the due process rights of inadmissible
14 arriving noncitizens seeking initial entry into the United States. The Supreme Court
15 stated that such individuals have no due process rights “other than those afforded by
16 statute.” *Id.* at 107; *see also id.* at 140 (“[A]n alien in respondent’s position has only
17 those rights regarding admission that Congress has provided by statute.”). The
18 Supreme Court noted that its determination was supported by “more than a century of
19 precedent.” *Id.* at 138 (citing *Nishimura Ekiu v. United States*, 142 U.S. 651, 660
20 (1892); *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950); *Mezei*, 345 U.S.
21 at 212; *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)). Because the only process due
22 Petitioner is that afforded under section 1225(b), the Court must reject his claim that
23 his detention violates the Fifth Amendment’s Due Process Clause and deny his
24 requested relief. *See Thuraissigiam*, 591 U.S. at 138–40; *Mendoza-Linares*, 51 F.4th at
25 1167; *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (“The
26 recognized liberty interests of U.S. citizens and aliens are not coextensive: the Supreme
27 Court has ‘firmly and repeatedly endorsed the proposition that Congress may make
28 rules as to aliens that would be unacceptable if applied to citizens.’”) (quoting *Demore*

1 v. *Kim*, 538 U.S. 510, 522 (2003)); *Zelaya-Gonzalez*, 2023 WL 3103811, at *4
2 (“Binding Ninth Circuit and Supreme Court precedents are clear that Petitioner lacks
3 any rights beyond those conferred by statute, and no statute entitles Petitioner to a bond
4 hearing.”).

5 Since the Supreme Court’s decision in *Thuraissigiam*, numerous published
6 decisions have acknowledged *Thuraissigiam*’s impact on the precise Fifth Amendment
7 Due Process Clause that Petitioner might have raised in this petition: Does an alien
8 detained under 8 U.S.C. § 1225(b)(1) have a due process right to release or a bond
9 hearing after being detained for a certain period of time? The answer is no. *See*
10 *Mendoza-Linares v. Garland*, No. 21-cv-1169-BEN (AHG), 2024 WL 3316306, *2
11 (S.D. Cal. June 10, 2024) (“[T]he Court finds that Petitioner has no Fifth Amendment
12 right to a bond hearing pending his removal proceedings.”); *Zelaya-Gonzalez*, 2023
13 WL 3103811. *3 (S.D. Cal. Apr. 25, 2023) (same); *Rodriguez Figueroa v. Garland*,
14 535 F. Supp. 3d 122, 126–27 (W.D.N.Y. 2021); *Gonzales Garcia v. Rosen*, 513 F.
15 Supp. 3d 329, 336 (W.D.N.Y. 2021); *St. Charles v. Barr*, 514 F. Supp. 3d 570, 579
16 (W.D.N.Y. 2021); *Petgrave v. Aleman*, 529 F. Supp. 3d 665, 667 (S.D. Tex. 2021).

17 Even if the Court infers a constitutional right against prolonged mandatory
18 detention, Petitioner’s claim still fails. “In general, as detention continues past a year,
19 courts become extremely wary of permitting continued custody absent a bond hearing.”
20 *Sibomana v. LaRose*, No. 22-cv-933-LL-NLS, 2023 WL 3028093, at *4 (S.D. Cal.
21 April 20, 2023) (citation omitted); *see also Durand v. Allen*, No. 3:23-cv-00279-RBM-
22 BGS, 2024 WL 711607, at *5 (S.D. Cal. Feb. 21, 2024) (detained over two-and-a-half
23 years); *Sanchez-Rivera v. Matuszewski*, No. 22-cv-1357-MMA (JLB), 2023 WL
24 139801, at *6 (S.D. Cal. Jan. 9, 2023) (three years); *Yagao v. Figueroa*,
25 No. 17-cv-2224-AJB-MDD, 2019 WL 1429582, at *2 (S.D. Cal. March 29, 2019) (two
26 years). Petitioner’s detention (5 months, 21 days) falls significantly short of the length
27 courts have found to raise due process concerns.

1 In similar cases, courts in this district have applies the test in *Banda v.*
2 *McAleenan*, 385 F. Sup. 3d 1099, 1106 (W.D. Wash. 2019), first adopted by Judge
3 Battaglia in *Kydyrali v. Wolf*, 499 F. Supp. 3d 768 (S.D. Cal. 2020). Under *Banda*, to
4 determine whether continued mandatory detention has become unreasonable, courts
5 look at (1) total length of detention to date; (2) likely duration of future detention; (3)
6 conditions of detention; (4) delays in the removal proceedings caused by the detainee;
7 (5) delays in the removal proceedings caused by the government; and (6) the likelihood
8 that the removal proceedings will result in a final order of removal. *Banda*, 385 F. Sup.
9 3d at 1106.

10 First, Petitioner's 5 months and 21 days in immigration custody should not favor
11 granting his release. The length of detention in *Kydyrali* was 27 months, over 4 times
12 as long as Petitioner's detention. *See Kydyrali*, 499 F. Supp. 3d at 773. This relatively
13 short duration does not justify habeas relief. *See Prieto-Romero v. Clark*, 534 F.3d
14 1053, 1065 (9th Cir. 2008) (finding no constitutional violation in detention of more
15 than three years under § 1226(a)); *see also Durand v. Allen*, No. 3:23-cv-00279-RBM-
16 BGS, 2024 WL 711607 at *5 (S.D. Cal. Feb. 21, 2024) (32 months); *Sibomana*, 2023
17 WL 3028093, at *4 (19 months); *Sanchez-Rivera*, 2023 WL 139801 at *6 (three years);
18 *Yagao v. Figueroa*, No. 17-CV-2224-AJB-MDD, 2019 WL 1429582, at *1 (S.D. Cal.
19 Mar. 29, 2019) (42 months).

20 Notably, "the length of detention . . . is the most important factor." *Banda*, 385
21 F. Supp. 3d at 1118. Plainly, the period of Petitioner's detention is reasonable.
22 Moreover, the length of Petitioner's detention, by itself, does not favor granting habeas
23 relief. *See Sadeqi v. LaRose*, No. 25-cv-2587-RSH-BJW, 2025 WL 3154520, at *3
24 (S.D. Cal. Nov. 12, 2025) ("The Court agrees with Respondents that the length of
25 Petitioner's detention to date—almost 12 months—does not by itself, without more,
26 establish prolonged detention in violation of due process."). This weighs against
27 Petitioner's release.

28

1 Second, the likely duration of future detention is neutral. Petitioner has already
2 been ordered removed to Uganda by an immigration judge and he has affirmatively
3 and voluntarily appealed that order to the BIA. Any length of detention after he
4 appealed his final order of removal to the BIA is purely speculative. The fourth factor
5 (delays in the removal proceedings caused by Petitioner) weighs against Petitioner.
6 Though he has the right to appeal his removal order to the BIA, it nonetheless delays
7 his own immigration proceedings as well as his time in immigration custody. *See*
8 *Alfaro-Mejia v. Holder*, No. 13-795-JAK (AJW), 2013 WL 599876, at *1 (C.D.
9 California Feb. 15, 2013) (“Petitioner cannot simultaneously thwart [his] removal and
10 seek a writ of habeas corpus on the ground that [he] has not yet been removed.”). The
11 fifth factor (delays in the removal proceedings caused by the government) is neutral,
12 as the record does not evidence any delays in removal proceedings caused by DHS.
13 The sixth and final factor weighs in favor of Respondents because an immigration
14 judge has already entered a final order of removal against Petitioner. Furthermore, the
15 immigration judge’s decision was controlled by an international agreement between
16 the United States and Uganda. *See* Petition at 1-7 p. 8-14.

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

20 Accordingly, Petitioner’s mandatory detention for 5 months and 21 days does not
21 violate due process. *See Duran Romero v. LaRose*, No. 25-cv-3567-AGS-VET, ECF
22 No. 7 (S.D. Cal. Jan. 14, 2026); *Shahin v. Noem*, No. 25-cv-2496-AGS-KSC, ECF No.
23 12 (S.D. Cal. Dec. 23, 2025); *Mendez Ramirez*, 612 F. Supp. 3d at 221; *Gonzalez*
24 *Aguilar v. Wolf*, 448 F. Supp. 3d at 1212; *de la Rosa Espinoza*, 2020 WL 3452967, at
25 *6-8.

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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 15, 2026

Respectfully submitted,

ADAM GORDON
United States Attorney

s/Hunter V. Norton
HUNTER V. NORTON
Assistant United States Attorney

Attorneys for Respondents