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

ILIJAS DUKA,

Petitioner,

v.

CHRISTOPHER LAROSE; et al.,

Respondents.

Case No.: 26-cv-3564-AGS-DEB

**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

1 removal proceedings. Accordingly, the Court should deny Petitioner's request for
2 relief.

3 In its June 22, 2026 Order, the Court ordered Respondents to notify the Court as
4 to whether Petitioner would require an interpreter at the July 13 hearing and, if so,
5 which language. ECF No. 2. Respondents respectfully submit that Petitioner will
6 require a Turkish interpreter.

7 II. FACTUAL AND PROCEDURAL BACKGROUND

8 Petitioner is a native and citizen of Albania, who entered the United States
9 without inspection near San Ysidro Port of Entry on December 9, 2025. *See* Exhibit 1
10 (Form I-213).¹ Petitioner did not then have any valid entry documents to enter the
11 United States. He was determined to be inadmissible under 8 U.S.C.
12 § 1182(a)(7)(A)(i)(I), placed in expedited removal proceedings pursuant to 8 U.S.C. §
13 1225(b)(1), and taken into Immigration and Customs Enforcement (ICE) custody
14 pursuant to 8 U.S.C. § 1225(b)(1)(B). *See* Exhibit 2 (Notice and Order of Expedited
15 Removal). He was then interviewed by an asylum officer, pursuant to 8 U.S.C.
16 § 1225(b)(1)(B). After receiving a positive credible fear determination, Petitioner was
17 issued a Notice to Appear (NTA). Exhibit 3.

18 The filing of the NTA initiated removal proceedings, pursuant to 8 U.S.C.
19 § 1229a, against Petitioner. The Notice to Appear scheduled Petitioner's initial master
20 calendar hearing for January 5, 2026. *See id.* Petitioner's removal proceedings
21 concluded with an individual merits hearing on May 12, 2026, where the immigration
22 judge denied his asylum claim, withholding of removal under INA § 241(b)(3), and
23 withholding and deferral of removal under the Convention Against Torture. *See* Exhibit
24 4 (Order of Immigration Judge). Petitioner reserved his right to appeal and filed an

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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 appeal on May 27, 2026. *See* Exhibit 5 (Notice of Appeal). Petitioner remains
2 mandatorily detained under 8 U.S.C. § 1225(b)(1)(B).

3 III. STATUTORY BACKGROUND

4 Section 235 of the Immigration and Nationality Act (INA), codified at 8 U.S.C.
5 § 1225, applies to an “applicant for admission,” defined as an “alien present in the
6 United States who has not been admitted” or “who arrives in the United States.” 8
7 U.S.C. § 1225(a)(1). “[A]pplicants for admission fall into one of two categories, those
8 covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings v. Rodriguez*,
9 583 U.S. 281, 287 (2018).

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

22 IV. ARGUMENT

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

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

1 Here, Petitioner's claims of unlawful detention necessarily arise from the
2 Department of Homeland Security's² decision to commence removal proceedings
3 against him because that decision unavoidably triggers mandatory detention under 8
4 U.S.C. § 1225(b)(1)(B)(ii) until the conclusion of his removal proceedings. *See, e.g.,*
5 *Wang v. United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at *6 (C.D.
6 Cal. Aug. 18, 2010) (finding section 1252(g) bars judicial review of false imprisonment
7 claim because the plaintiff's detention arose from the decision to commence removal
8 proceedings, and in turn, the "statute mandating detention during removal proceedings
9 of a person charged as an 'arriving alien.'").

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

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

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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).

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 6.5-month detention should not favor granting
4 his release. The length of detention in *Kydyrali* was 27 months, nearly four times as
5 long as Petitioner's detention. *See Kydyrali*, 499 F. Supp. 3d at 773. This relatively
6 short duration does not justify habeas relief. *See Prieto-Romero v. Clark*, 534 F.3d
7 1053, 1065 (9th Cir. 2008) (finding no constitutional violation in detention of more
8 than three years under § 1226(a)); *see also Durand v. Allen*, No. 3:23-cv-00279-RBM-
9 BGS, 2024 WL 711607 at *5 (S.D. Cal. Feb. 21, 2024) (32 months); *Sibomana*, 2023
10 WL 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 was held on May 12, 2026, where an immigration
22 judge denied Petitioner's applications for relief and ordered him removed. While
23 Petitioner has appealed that decision to the BIA, any length of detention concerning
24 the appeal process is purely speculative. The fourth and fifth factors (delays in the
25 removal proceedings caused by Petitioner and the government) are neutral, as the
26 record does not evidence any delays in removal proceedings. The sixth and final factor
27 weighs in favor of Respondents because an immigration judge has entered a removal
28 order against Petitioner, which Petitioner has appealed to the BIA

1 Balancing the above factors, the record does not support a finding that “detention
2 has become so unreasonable as to require an initial bond hearing,” *Sanchez-Rivera*,
3 2023 WL 139801, at *6, or an order requiring Petitioner’s release.

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

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

15 V. CONCLUSION

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

18
19 Dated: June 29, 2026

Respectfully submitted,

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