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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

BAH ALHASSANE,

Petitioner,

v.

PATRICK DIVVER, *et al.*,

Respondents.

Case No.: 26-cv-03994-TWR-DEB

RETURN TO PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

Petitioner, through counsel, requests that the Court order Petitioner's release from Immigration and Customs Enforcement (ICE) custody. Petitioner previously filed, through the same counsel, a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, where Petitioner also challenged the legality of Petitioner's ICE detention. *See Alhassane v. Divver*, No. 26-cv-622-TWRDEB (S.D. Cal.). Judge Robinson denied the previously filed petition on April 30, 2026. *See Id.* at ECF No. 7.

This Court lacks jurisdiction because Petitioner's claims are barred by 8 U.S.C. § 1252(g). Moreover, as there is no administratively final order of removal, Petitioner

remains mandatorily detained under 8 U.S.C. § 1225(b)(1)(B) until the conclusion of Petitioner's removal proceedings. Accordingly, the Court should deny Petitioner's request for relief.

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a native and citizen of Guinea, who entered the United States without inspection near San Ysidro, California, on December 11, 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 2 (Notice and Order of Expedited Removal). Petitioner was then interviewed by an asylum officer, pursuant to 8 U.S.C. § 1225(b)(1)(B). After receiving a negative credible fear determination, an immigration judge (IJ) vacated the DHS credible fear determination. *See* Exhibit 3 (IJ Order Vacating Credible Fear Determination). Petitioner was subsequently issued a Notice to Appear (NTA) initiating removal proceedings against Petitioner. *See* Exhibit 4 (Notice to Appear). On March 4, 2026, the IJ granted DHS's motion to pretermit Petitioner's asylum application and ordered Petitioner removed to Uganda. ECF. No 1 at 5. Subsequently, Petitioner filed an appeal before the Board of Immigration Appeals (BIA). *Id.* Petitioner filed their appeal on June 22. *Id.* 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.

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).

IV. ARGUMENT

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

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

Here, Petitioner's claims of unlawful detention necessarily arise from the Department of Homeland Security's[2] decision to commence removal proceedings against him because that decision unavoidably triggers mandatory detention under 8 U.S.C. § 1225(b)(1)(B)(ii) until the conclusion of their removal proceedings. *See, e.g.*,

[2] "In 2002, Congress transferred the Attorney General's immigration enforcement responsibilities to the Secretary of Homeland Security." *Ibarra-Perez v. United States*, 154 F.4th 989, 995 n.2 (9th Cir. 2025).

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

As explained by another district court, removal proceedings are commenced when, as occurred here, "the alien is issued a Notice to Appear before an immigration court." *Herrera-Correra v. United States*, No. CV 08–2941 DSF (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008); *see also* Exhibit 4 (Notice to Appear). The government "may arrest the alien against whom proceedings are commenced and detain that individual until the conclusion of those proceedings." *Herrera-Correra*, 2008 WL 11336833, at *3. "Thus, an alien's detention throughout this process arises from the [government's] decision to commence proceedings" and review of claims arising from such detention is barred under section 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)); *see also Wang*, 2010 WL 11463156, at *6.

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

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 the 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 their 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* 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 has not been granted temporary parole, section 1225(b)(1)(B) mandates 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)(1)(B) and the statute does not entitle him to release at this time, the 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 is not unconstitutionally prolonged.

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).

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

Even if the Court infers a constitutional right against prolonged mandatory detention, Petitioner's claim still fails. "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 detention falls significantly short of the length courts have found to raise due process concerns.

In similar cases, courts in this district have applies the test in *Banda v. McAleenan*, 385 F. Sup. 3d 1099, 1106 (W.D. Wash. 2019), first adopted by Judge Battaglia in *Kydyrali v. Wolf*, 499 F. Supp. 3d 768 (S.D. Cal. 2020). Under *Banda*, to determine whether continued mandatory detention has become unreasonable, courts look at (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. *Banda*, 385 F. Sup. 3d at 1106.

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

2023 WL 139801 at *6 (three years); *Yagao v. Figueroa*, No. 17-CV-2224-AJB-MDD, 2019 WL 1429582, at *1 (S.D. Cal. Mar. 29, 2019) (42 months).

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

Second, the likely duration of future detention weighs against Petitioner. Petitioner and Respondent have submitted their briefs to the BIA. *See* ECF. No 1 at 5. At the conclusion of the appeals process, Petitioner's path to release or removal should be clear. Any length of detention after that point is purely speculative. The fourth and fifth factors (delays in the removal proceedings caused by Petitioner and the government) are neutral, as the record does not evidence any delays in removal proceedings. The sixth and final factor weighs in favor of Respondents because an immigration judge has entered a removal order against Petitioner, which Petitioner has appealed to the BIA

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

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

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 17, 2026

Respectfully submitted,

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