

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 25-cv-01151-JMB-DLM

DOĞUKAN G.,

Petitioner,

v.

**RESPONDENTS' RETURN
TO ORDER TO SHOW
CAUSE**

DONALD J. TRUMP, *in his official capacity as President of the United States*; JOEL BROTT, *in his official capacity as the Sherburne county Sheriff*; PETER BERG, *in his official capacity as the St. Paul Field Office Director for the U.S. Immigration and Customs Enforcement*; JAMIE HOLT, *in her official capacity as Homeland Security Investigations, St. Paul Special Agent in Charge, U.S. Immigration and Customs Enforcement*; TODD LYONS, *in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement*; KRISTI NOEM, *in her official capacity as Secretary of the United States Department of Homeland Security*; MARCO RUBIO, *in his official capacity as Secretary of State*,

Respondents.

INTRODUCTION

Respondents respectfully submit this Response to the Petition filed in this case. ECF No. 1. ICE arrested Doğukan G. (Doğukan) on March 27, 2025 and personally served Doğukan with a Notice to Appear (NTA), thereby commencing removal proceedings against him. Doğukan is detained under 8 U.S.C. § 1226(a). This Court has no jurisdiction to review the discretionary decision of ICE to commence removal proceedings against Doğukan. Doğukan has a hearing in immigration court on April 8, 2025, which is the sole forum available to him to litigate the questions he presents in his Petition.

FACTUAL BACKGROUND

I. Doğukan's Immigration Status and Removal Proceedings

Doğukan is a citizen and national of Turkey. Doğukan's most recent entry to the United States was on January 13, 2022, at O'Hare International Airport in Chicago, IL. Doğukan entered the United States on an F-1 student, nonimmigrant visa. Declaration of Angela Minner ("Minner Decl.") ¶ 4, Ex. 1.

On June 24, 2023, Doğukan was arrested in Minneapolis for driving while impaired. According to the Statement of Probable Cause, Doğukan "almost hit a stop light and proceed[ed] to jump a curb, then weave[d] in and out of the left lane on Washington Ave. near Hennepin Ave. . . . then fail[ed] to signal a lane change, cutting off another vehicle. . . ." Doğukan stopped, but when the officer started to approach the vehicle, Doğukan "drove away." When Doğukan finally stopped, the officer administered a preliminary breath test which showed an alcohol concentration of 0.2." Minner Decl., Ex. 2. He plead guilty to a gross misdemeanor charge and was sentenced to 180 days stayed for 2 years. Minner Decl. ¶ 5, Ex. 2.

On March 27, 2025, US Immigration and Customs Enforcement (ICE) officials arrested Doğukan at his residence in St. Paul, MN. The arresting officers explained to Doğukan that his visa was revoked due to his DWI conviction and that he was being placed under administrative arrest. The officers served Doğukan a Warrant for Arrest of Alien (Form I-200) at the ICE office at Fort Snelling, MN. Minner Decl. ¶ 7, Ex. 4.

On March 27, 2025, ICE officials processed Doğukan and served him a Notice to Appear (Form I-862) charging him under 237(a)(1)(C)(i) of the Immigration and

Nationality Act, as amended, in that after admission as a nonimmigrant under Section 101(a)(15) of the Act, he failed to maintain or comply with the conditions of the nonimmigrant status under which he was admitted. Doğukan signed for the NTA and requested a prompt hearing before an immigration judge. Minner Decl. ¶ 8, Ex. 5.

On April 2, 2025, ICE Officials filed Additional Charges of Inadmissibility/Deportability, Form I-261, adding the additional allegation that “[o]n March 23, 2025, the United States Department of State revoked your F-1 student visa, effective immediately, pursuant to authority in section 221(i) of the Immigration and Nationality Act, 8 U.S.C. 1201(i).” Minner Decl. ¶ 9, Ex. 6. Doğukan is currently in ICE’s detention in Sherburne County Jail in Elk River, Minnesota, pursuant to 8 U.S.C. § 1226(a). Minner Decl. ¶ 10.

On April 8, 2025, a hearing is scheduled in immigration court on Doğukan’s detention and removal. Minner Decl. ¶ 11.

II. Procedural History

Doğukan filed his Petition on March 30, 2025. ECF No. 1. Petitioner brings three claims. First, he alleges his detention violates of his Fifth Amendment right to due process because Respondents “have not demonstrated the Mr. Doğukan needs to be detained.” ECF No. 1 ¶¶ 62-67. Second, he asserts a claim under the Administrative Procedures Act related to the termination of his student status as arbitrary and capricious. ECF No. 1 ¶¶ 68-73. Finally, Petitioner generally asserts a claim for “Release Pending Adjudication.” ECF No. 1 ¶¶ 74-76.

On April 2, 2025, this Court ordered the Respondents to respond to the Petition by April 4, 2025. ECF 5. The Respondents requested additional time to respond and asserted that good cause existed because there were additional facts, including the fact of the hearing on April 8, 2025, that would develop in short order. This Court denied the request (ECF No. 9), and the United States hereby responds, to the extent it is able. The Federal Respondents may seek permission to supplement the factual record.

ARGUMENT

The Petition in this case urges the Court to wade into the complexities of immigration law that have a clear channel of review through immigration court, the Board of Immigration Appeals, and eventually the Eight Circuit Court of Appeals. As outlined in detail below, this Court does not have jurisdiction to evaluate ICE's decisions to commence removal proceedings or to arrest and detain Doğukan during the pendency of those proceedings. Doğukan has a hearing in immigration court in just a few days, April 8, 2025, that will present him with the first opportunity to make substantive arguments regarding his removability as well as his detention. This Court should allow those proceedings to play out. There is no basis to grant Doğukan's petition, and the Respondents respectfully request that this Court deny it.

I. Statutory and Regulatory Framework for Detention Authority

For more than a century, the immigration laws have authorized immigration officials to charge noncitizens as removable from the country, arrest noncitizens subject to removal, and detain noncitizens during their removal proceedings. *See Abel v. United States*, 362 U.S. 217, 232–37 (1960). In the INA, Congress enacted a multi-layered

statutory scheme for the civil detention of noncitizens pending a decision on removal, during the administrative and judicial review of removal orders, and in preparation for removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. “Detention during removal proceedings is a constitutionally valid aspect of the deportation process.” *Velasco Lopez*, 978 F.3d at 848 (citing *Demore v. Kim*, 538 U.S. 510, 523 (2003)); *see Demore*, 538 U.S. at 523 n.7 (“In fact, prior to 1907 there was no provision permitting bail for *any* aliens during the pendency of their deportation proceedings.”); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) (“Detention is necessarily a part of this deportation procedure.”). Indeed, removal proceedings “‘would be [in] vain if those accused could not be held in custody pending the inquiry into their true character.’” *Demore*, 538 U.S. at 523 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)).

Section 1226 “generally governs the process of arresting and detaining . . . aliens pending their removal.” *Jennings v. Rodriguez*, 138 S. Ct. 830, 837 (2018). Section 1226(a) provides that “an alien *may* be arrested and detained pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a) (emphasis added). The Attorney General and the Department of Homeland Security (“DHS”) thus have broad discretionary authority to detain a noncitizen during removal proceedings.¹ *See* 8 U.S.C. §

¹ Although the relevant statutory sections refer to the Attorney General, the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002), transferred all immigration enforcement and administration functions vested in the Attorney General, with few exceptions, to the Secretary of Homeland Security. The Attorney General’s authority—delegated to immigration judges, *see* 8 C.F.R. § 1003.19(d)—to detain, or authorize bond for noncitizens under section 1226(a) is “one of the authorities he retains . . . although this authority is shared with [DHS] because officials of that department make the initial determination whether an alien will remain in custody during removal proceedings.” *Matter of D-J-*, 23 I. & N. Dec. 572, 574 n.3 (A.G. 2003).

1226(a)(1) (DHS “may continue to detain the arrested alien” during the pendency of removal proceedings); *Nielsen v. Preap*, 139 S. Ct. 954, 966 (2019) (highlighting that “subsection (a) creates authority for *anyone*’s arrest or release under § 1226—and it gives the Secretary broad discretion as to both actions”). When a noncitizen is apprehended, a DHS officer makes an initial custody determination. *See* 8 C.F.R. § 236.1(c)(8). DHS “may continue to detain the arrested alien.” 8 U.S.C. § 1226(a)(1). “To secure release, the alien must show that he does not pose a danger to the community and that he is likely to appear for future proceedings.” *Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2280–81 (2021) (citing 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8); *Matter of Adeniji*, 22 I. & N. Dec. 1102, 1113 (BIA 1999)).

If DHS decides to release the noncitizen, it may set a bond or place other conditions on release. *See* 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(c)(8). If DHS determines that a noncitizen should remain detained during the pendency of his removal proceedings, the noncitizen may request a bond hearing before an immigration judge. *See* 8 C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d). The immigration judge then conducts a bond hearing and decides whether to release the noncitizen, based on a variety of factors that account for the noncitizen’s ties to the United States and evaluate whether the noncitizen poses a flight risk or danger to the community. *See Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006);² *see*

² The BIA has identified the following non-exhaustive list of factors the immigration judge may consider: “(1) whether the alien has a fixed address in the United States; (2) the alien’s length of residence in the United States; (3) the alien’s family ties in the United States, and whether they may entitle the alien to reside permanently in the United States in the future; (4) the alien’s employment history; (5) the alien’s record of appearance in court; (6) the alien’s criminal record, including the extensiveness of criminal activity, the recency of such

also 8 C.F.R. § 1003.19(d) (“The determination of the Immigration Judge as to custody status or bond may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the alien or [DHS].”).

Section 1226(a) does not provide a noncitizen with a right to release on bond. *See Matter of D-J-*, 23 I. & N. Dec. at 575 (citing *Carlson*, 342 U.S. at 534). Nor does § 1226(a) explicitly address the burden of proof that should apply or any particular factors that must be considered in bond hearings. Rather, it grants DHS and the Attorney General broad discretionary authority to determine whether to detain or release a noncitizen during his removal proceedings. *See id.* In the exercise of this broad discretion, and consistent with the DHS regulations, the BIA—whose decisions are binding on immigration judges—has placed the burden of proof on the noncitizen, who “must establish to the satisfaction of the Immigration Judge and this Board that he or she does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight.” *Guerra*, 24 I. & N. Dec. at 38; *accord Matter of Adeniji*, 22 I. & N. Dec. at 1114. The BIA’s “to the satisfaction” standard is equivalent to a preponderance of the evidence standard. *See Matter of Barreiros*, 10 I. & N. Dec. 536, 537 (BIA 1964).

If, after the bond hearing, the immigration judge concludes that the noncitizen should not be released, or the immigration judge has set a bond amount that the noncitizen believes is too high, the noncitizen may appeal that decision to the BIA. *See* 8 C.F.R. §§

activity, and the seriousness of the offenses; (7) the alien’s history of immigration violations; (8) any attempts by the alien to flee prosecution or otherwise escape from authorities; and (9) the alien’s manner of entry to the United States.” *Guerra*, 24 I. & N. Dec. at 40.

236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3). Moreover, if the noncitizen's circumstances change following his initial bond hearing, he may request a subsequent hearing, *see* 8 C.F.R. § 1003.19(e), and the outcome of that hearing is also appealable to the BIA, *see Matter of Uluocha*, 20 I. & N. Dec. 133, 134 (BIA 1989).

II. This Court does not have jurisdiction to review ICE's decision to institute removal proceedings.

Petitioner urges this Court to find that he was unlawfully arrested and brought before the immigration Court. This is an impermissible collateral attack on those removal proceedings. The Court lacks jurisdiction under 8 U.S.C. 1252(g) to review and take any action regarding ICE's decision to commence or adjudicate removal proceedings. The plain language of 1252(g) prohibits the Court from hearing Plaintiffs' claims, regardless of how they are styled: "no 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 against any alien under this chapter." *Id.* This jurisdictional bar applies "notwithstanding any other provision of law (statutory or nonstatutory)"— "[e]xcept as" otherwise "provided in" section 1252. *Id.*³

In *S-Cheng v. Ashcroft*, 380 F.3d 320, 324 (8th Cir. 2004), the Eighth Circuit applied Section 1252(g) and found that it did not have jurisdiction to hear the plaintiff's claim that DHS improperly instituted removal proceedings against her. The plaintiff in *S-Cheng*

³ Ms. Giombetti will not be without relief to bring claims as to the result of her removal proceedings, including claims that her constitutional rights were violated. *Tostado v. Carlson*, 481 F.3d 1012, 1014 (8th Cir. 2007) (interpreting 8 U.S.C. § 1252(a)(5) and 1252(a)(2)(D)).

challenged the agency's decision to institute removal proceedings, as it would impact her ability to apply for a visa from within the United States. *Id.* at 322. Despite sympathizing with the plaintiff's position, the Eighth Circuit found 1252(g) protected the agency's decision to institute proceedings: "In essence, she wishes to invade the prosecutorial discretion of the agency and determine herself how the agency should proceed against her." *Id.* at 324. The Eighth Circuit found the decision to institute removal proceedings was "within the discretion of the agency and cannot be reviewed by the courts." *Id.*, citing *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 486-87, 119 S.Ct. 936, 940 (1999); see also *Grass v. Gonzales*, 418 F.3d 876 (8th Cir. 2005) (relying on 1252(g) to reject, as "without merit" challenge to the initiation of removal proceedings as a violation of public policy).

A myriad of similar cases hold that the statute bars a district court from reviewing DHS's decision to commence and adjudicate removal proceedings. See, e.g., *Giombetti v. Wolf*, No. CV 20-873 (JRT/ECW), 2020 WL 2319855, at *1 (D. Minn. May 11, 2020) ("Because Giombetti's claims . . . arise out of a decision or action to commence removal proceedings, 8 U.S.C. § 1252 strips the Court of jurisdiction . . ."); *Karr v. Meade*, 447 F. Supp. 3d 1293, 1295 (S.D. Fla. 2020), opinion vacated, appeal dismissed sub nom. *Karr v. Field Off. Dir.*, No. 20-11144-BB, 2021 WL 10342689 (11th Cir. May 12, 2021) (rejecting petitioners' attempt to enjoin DHS from commencing and proceeding with removal proceedings); *Arega v. Evans*, No. 2:18-CV-562, 2018 WL 4927922, at *3 (S.D. Ohio Oct. 11, 2018), report and recommendation adopted, No. 2:18-CV-562, 2019 WL 1233677 (S.D. Ohio Mar. 18, 2019); *Albarran v. Wong*, 157 F. Supp. 3d 779, 786 (N.D. Ill. 2016).

The Supreme Court's decision in *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 487, 119 S. Ct. 936, 945, 142 L. Ed. 2d 940 (1999), interpreted 1252(g) more than 20 years ago and found that Congress's intent to preserve the executive's discretion to commence, adjudicate, or execute removal orders was clear. This case falls squarely within the plain language of the statute's prohibitions on review of decision to commence and adjudicate removal proceedings. *See S-Cheng*, 380 F.3d at 324; *see also Karr v. Meade*, 2020 WL 1343506, at *7 (rejecting attempt to enjoin DHS from commencing removal proceedings to allow several petitioners to file I-601A applications). This Court does not have jurisdiction to review the executive branch's decision to institute removal proceedings.

III. This Court likewise has no jurisdiction to order Doğukan be detained at any particular location.

This Court also lacks jurisdiction over ICE's discretionary decision concerning where to detain aliens in immigration detention, and thus the Court lacks authority to enjoin Doğukan's potential transfer to a different location (to the extent his is now or in the future makes that argument). Any argument in this regard amounts to a challenge to the commencement of removal proceedings over which this Court lacks jurisdiction under 8 U.S.C. § 1252(g) because decisions relating to commencement of proceedings necessarily includes the method by which they are commenced. *See Alvarez v. ICE*, 818 F.3d 1194, 1202 (11th Cir. 2016) (recognizing that the three actions listed Section 1252(g)—commence proceedings, adjudicate cases, and execute removal orders—“represent the initiation or prosecution of various stages in the deportation process,” and “[a]t each stage

the Executive has discretion to abandon the endeavor” for any number of reasons) (citing *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 483 (1999)).

The commencement of proceedings requires ICE to determine whether, when, and where to commence such proceedings, meaning that Section 1252(g) bars this Court’s review of ICE’s decision where to initiate removal proceedings. *See, e.g., Alvarez v. U.S. Immigr. & Customs Enft*, 818 F.3d 1194, 1203 (11th Cir. 2016) (“The challenge to ICE’s decision, made by its counsel, Defendant Emery, essentially asks this Court to find that the agency should have chosen a different method of commencing proceedings. The district court was correct to find that Section 1252(g) strips us of the power to entertain such a claim.”); *Arostegui v. Holder*, 368 F. App’x 169, 171 (2d Cir. 2010) (holding, upon a petition for review of a final removal order: “Whether and when to commence removal proceedings is within the discretion of DHS, and we do not have jurisdiction to review such decisions, unless petitioner raises constitutional claims or questions of law.”) (citing 8 U.S.C. § 1252(g)).

Additionally, the Executive’s authority under 8 U.S.C. § 1231(g) to decide the location of detention for individuals detained pending removal proceedings falls within the review bar in 8 U.S.C. § 1252(a)(2)(B)(ii). That is because, under Section 1231(g), ICE “necessarily has the authority to determine the location of detention of an alien in deportation proceedings,” including whether to change that location during the pendency of proceedings. *Gandarillas-Zambrana v. Bd. Immigration Appeals*, 44 F.3d 1251, 1256 (4th Cir. 1995); *see, e.g., Wood v. United States*, 175 F. App’x 419, 420 (2d Cir. 2006)

(holding that the Secretary “was not required to detain [Plaintiff] in a particular state” given the Secretary’s “statutory discretion” under Section 1231(g)).

A district court may not exercise jurisdiction over ICE’s decision to detain an alien in a given location, and may not order ICE to transfer an alien from one location to another. *See, e.g., Salazar v. Dubois*, No. 17-cv-2186 (RLE), 2017 WL 4045304, at *1 (S.D.N.Y. Sept. 11, 2017) (concluding that the district court “does not have authority to issue an order to change or keep [an alien] at any particular location”); *Zheng v. Decker*, No. 14-cv-4663 (MHD), 2014 WL 7190993, at *15-16 (S.D.N.Y. Dec. 12, 2014) (denying petitioner’s request that the Court order ICE not to transfer him to another jurisdiction, holding that Section 1231(g) transfer authority “is among the [Secretary of Homeland Security’s] discretionary powers. The INA precludes judicial review over such discretionary decisions. *See* 8 U.S.C. § 1252(a)(2)(B)(ii) (barring district courts from exercising subject matter jurisdiction over “any . . . decision or action of the Attorney General . . . the authority for which is specified under this subchapter [8 U.S.C. §§ 1151-1381] to be in the discretion of the Attorney General . . .”).

IV. Doğukan’s detention under 8 U.S.C. § 1226(a) during the pendency of his removal proceedings is valid.

a. The Court has a very limited role.

The Court’s review of Doğukan’s Petition is limited. The Supreme Court has restricted judicial review of immigration matters, including immigration detention issues. *I.N.S. v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999); *Reno v. Flores*, 507 U.S. 292, 305 (1993); *Fiallo v. Bell*, 430 U.S. 787, 792 (1977); *see also Hampton v. Mow Sun Wong*, 426 U.S. 88, 101 n.21 (1976) (“[T]he power over aliens is of a political character and therefore

subject only to narrow judicial review.”). The Supreme Court has also “underscore[d] the limited scope of inquiry into immigration legislation,” and “has repeatedly emphasized that over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens.” *Fiallo*, 430 U.S. at 792 (internal quotation omitted); *Matthews v. Diaz*, 426 U.S. 67, 79-82 (1976); *Galvan v. Press*, 347 U.S. 522, 531 (1954).

The plenary power of Congress and the Executive Branch over immigration necessarily encompasses immigration detention, because the authority to detain is elemental to the authority to deport, and because public safety is at stake. *See Shaughnessy v. United States*, 345 U.S. 206, 210 (1953) (“Courts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control.”); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) (“Detention is necessarily a part of this deportation procedure.”); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) (“Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation.”).

This Court’s review is therefore limited to the constitutionality of Doğukan’s detention. Indeed, the Immigration and Nationality Act states: “The Attorney General’s discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole.” 8 U.S.C. § 1226(e); *see also Demore v. Kim*, 538 U.S. 510, 517 (2003) (finding that Section 1226(e) precludes review of Attorney General's discretionary

decisions to detain alien in a particular case). The question before the Court thus is not whether it agrees with ICE's detention determination, but whether continued detention is constitutional.

b. Doğukan's habeas petition is premature because he has not exhausted administrative remedies available to him in immigration court.

This Court should deny the petition because Doğukan failed to exhaust his administrative remedies. Given the procedural posture of this case, there can be little dispute that Doğukan has yet to exhaust the administrative relief available to him. Doğukan has a bond hearing in immigration court on April 8, 2025. If he is dissatisfied with the decision, he has the ability to appeal that decision to the BIA. By filing the habeas petition in this Court prior to the conclusion of the administrative procedures available to him, Doğukan is attempting an impermissible end-run around an available process that could render this litigation unnecessary, and which could resolve the matter. Doğukan has therefore failed to exhaust his available administrative relief, and the Court should deny the petition. *See Reiter v. Cooper*, 507 U.S. 258, 269 (1993) (“Where relief is available from an administrative agency, the plaintiff is ordinarily required to pursue that avenue of redress before proceeding to the courts; and until that recourse is exhausted, suit is premature and must be dismissed.”); *Mathena v. United States*, 577 F.3d 943, 946 (8th Cir. 2009); *Arroyo v. Fikes*, No. 21-CV-2489 (KMM/BRT), 2022 WL 2820405, at *2 (D. Minn. May 5, 2022).

While “[t]here is no statutory requirement that a habeas petitioner exhaust his administrative remedies before challenging his immigration detention [in federal court],”

Araujo-Cortes v. Shanahan, 35 F. Supp. 3d 533, 538 (S.D.N.Y. 2014), exhaustion should be required as a prudential matter, *accord Udoh v. Knutson*, No. 19-CV-1311 (MJD/HB), 2019 WL 5150141, at *1 (D. Minn. May 31, 2019), *report and recommendation adopted*, No. CV 19-1311 (MJD/HB), 2019 WL 4073392 (D. Minn. Aug. 29, 2019). Doğukan’s immigration proceedings have just commenced, and he has not sought any relief yet. For these reasons, the Court should require Doğukan to first exhaust his administrative remedies and should dismiss the petition (or hold it in abeyance as the facts develop in immigration court).

c. Doğukan’s detention is no unconstitutionally prolonged.

In his Petition, Doğukan attempts to assert a constitutional due process claim to his detention. Doğukan’s claim fails as a matter of law because he is receiving process due to him under the statutory and regulatory scheme set out by Congress in 8 U.S.C. § 1226(a). Doğukan has been in detention for less than two weeks and is scheduled to have a hearing, at which he can contest his detention, on April 8, 2025. This Court should deny the Petition.

Doğukan has no right to be released during the pendency of his immigration proceedings. *See Reno v. Flores*, 507 U.S. 292, 306 (1993) (“Congress eliminated any presumption of release pending deportation, committing that determination to the discretion of the Attorney General.”). Importantly, “when the Government deals with deportable [noncitizens], the Due Process Clause does not require it to employ the least burdensome means to accomplish its goal.” *Demore*, 538 U.S. at 528. And as the Supreme Court has ruled, “[t]he fundamental requirement of due process is the opportunity to be

heard at a meaningful time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (citation and quotation marks omitted). Due process demands only that the government provide “‘adequate procedural protections’ to ensure that the government’s asserted justification for physical confinement ‘outweighs the individual’s constitutionally protected interest in avoiding physical restraint.’” *Prieto-Romero v. Clark*, 534 F.3d 1053, 1065 (9th Cir. 2008) (quoting *Zadvydas v. Davis*, 533 U.S. 679, 690-91 (2001)).

During their removal proceedings, noncitizens like Doğukan who are detained under § 1226(a) receive numerous procedural safeguards. See, *supra*, Factual Background, § III. Doğukan is scheduled to appear before an immigration judge next week. He will have the opportunity for a bond hearing and for consideration of all of the merit-based arguments he has to contest his removability. He has not been denied due process, and his Petition should be dismissed.

This case is quite different from the prevalent litigation across the country challenging the constitutionality of prolonged, civil immigration detention. Doğukan has been detained for a short time and has process before him.

The Eighth Circuit has addressed the propriety of detention under 1226(a). In *Farass Ali v. Brott, et al.*, No. 19-1244, 2019 WL 1748712 (8th Cir. Apr. 16, 2019), the Court held that the language of 1226(a), which allows for detention during removal proceedings, was clear. Farass Ali had been taken into ICE custody in May 2017 and charged with removability based on fraud or misrepresentation at the time of his entry. *Id.* at *1. Because he was detained under § 1226(a), Ali received a bond hearing, which the IJ

denied.⁴ In September 2018, after over a year in detention, Ali filed a habeas petition arguing his detention was unconstitutional. *Id.* The district court granted Ali's petition and ordered him released, reasoning the Supreme Court's decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001) (which governs § 1231 post-removal order detention), and the doctrine of constitutional avoidance required the Court to read a "reasonableness limitation" into the time an alien could be detained during removal proceedings. *Id.* at *2.

The Eighth Circuit reversed and remanded. The court reasoned, citing *Jennings*, that § 1226 is not susceptible to more than one construction as to the length of detention.

In contrast to the statute analyzed in *Zadvydas*, § 1226(a) limits the period of detention to the period "pending a decision on whether the alien is to be removed from the United States." While this is not subject to precise calculation, it is, nonetheless, a defined period that does have an end.

Id. at *3. With respect to § 1226(c), the *Ali* court continued:

It is significant the Supreme Court has found unambiguous the language of § 1226(c), which requires mandatory detention until a decision regarding removal is reached, and therefore has refused to use constitutional avoidance to read an extra-textual "reasonableness" limitation into the statute. We see no principled basis for viewing § 1226(a)'s text regarding the length of detention any differently.

Id. at *4. Even if this Court were to consider the merits of the detention question here, there is no question that this short period of detention, coupled with the process afforded Petitioner, is valid.

⁴ Unlike with § 1226(c), aliens detained under § 1226(a) may request a bond redetermination hearing before an IJ if bond is initially denied. In order to be released, the alien has the burden of demonstrating that he is not a flight risk or a danger to the community. *See Matter of Guerra*, 24 I. & N. Dec. 37, 38 (BIA 2006).

V. This Court does not have jurisdiction in habeas to consider Petitioner's claim under the Administrative Procedures Act.

The Petition alleges that the Respondents acted arbitrarily and capriciously in violation of the Administrative Procedures Act. ECF No. 1 ¶ 69. Fundamentally, an APA claim is ill-suited for a habeas petition. *I.N.S. v. St. Cyr*, 533 U.S. 289, 310 (2001) (scope of review in habeas “far narrower” than the judicial review authorized by APA); *Marcello v. Bonds*, 349 U.S. 302, 310 (1955) (APA does not apply to deportation process where Immigration and Nationality Act creates complete procedures). Section 701(a)(2) of the APA precludes judicial review where agency action is committed to agency discretion by law. As such, judicial review of the State Department’s revocation of Petitioner’s visa is precluded since 8 U.S.C. § 1201(i) vests such revocation in the Secretary of State and precludes judicial review aside from in removal proceedings. *See Mansur v. Albright*, 130 F. Supp. 2d 59, 61 (D.D.C. 2001) (“Without such statutory or regulatory limitation, there is no law to apply to the Secretary's discretionary revocation, and this court lacks jurisdiction to review the revocation ...”). Similarly, ICE’s decisions to commence removal proceedings and arrest and detain Petitioner were all discretionary decisions not subject to APA review by this Court. *See Gicharu*, 983 F.3d at 20 (“Having concluded that Gicharu’s APA claim and habeas claim both arise from his removal proceedings, we hold that the district court lacked subject matter jurisdiction over those claims under section 1252(b)(9).”).

No final agency action exists to review at this point; Doğukan has just entered removal proceedings, which is the proper forum for arguing whether or not he is removable. *See* 5 U.S.C. § 704.

CONCLUSION

For all of the forgoing reasons, the Federal Respondents respectfully request that the Petition be dismissed.⁵

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⁵ The Federal Respondents do not believe an evidentiary hearing is necessary in this matter, as the submissions, including the declaration and exhibits, of the Federal Respondents provide the Court with a sufficient record upon which to adjudicate Doğukan's Petition.