BILAL A. ESSALI
United States Attorney
DAVID M. HARRIS
Assistant United States Attorney
Chief, Civil Division
JOANNE S. OSINOFF
Assistant United States Attorney
Chief, Complex and Defensive Litigation Section
CHUNG H. HAN (Cal. Bar No. 191757)
Assistant United States Attorney
Federal Building, Suite 7516
300 North Los Angeles Street
Los Angeles, California 90012
Telephone: (213) 894-0474
Facsimile: (213) 894-7819
E-mail: chung.han@usdoj.gov

Attorneys for Respondent

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

HAOWEN CHEN,

Petitioner,

v.

CYNTHIA ARMANT, Warden, Desert View Annex Detention Facility,

Respondent.

No. 2:25-cv-3130-JLS-PVC

RESPONDENT'S ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS

(Notice of Lodging of Declaration of Deportation Officer Christopher Jenson filed concurrently herewith)

Honorable Pedro V. Castillo
United States Magistrate Judge

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Haowen Chen ("Petitioner"), a citizen of China, is a civil immigration detainee who came into federal custody on March 27, 2025. On April 9, 2025, Petitioner filed a Petition for Writ of Habeas Corpus ("Petition"), which was amended on April 10, and April 16, 2025. Dkt. 1, 4, 8. Petitioner alleges violation of the Fifth Amendment Due Process clause. *See* Dkt. 8 ("Pet.") ¶¶ 48-51. Petitioner primarily requests that the Court hold a hearing to determine that his "detention is not justified" or to issue a writ of habeas corpus, ordering Respondent to schedule a hearing before an immigration judge within 30 days. *See id.* Prayer ¶¶ b, c.

On April 17, 2025, the Court ordered a response to the Petition and for Respondent to "electronically lodge with the Court all records bearing on the merits of Petitioner's claims." Dkt. 9 ¶ 7. In compliance with the Court's order, Respondent lodges herewith the Declaration of Deportation Officer Christopher Jenson with the attached Certification of the official Record of Proceedings for Petitioner.

The Petition fails, however, because noncitizens do not have rights other than those expressly provided by statute, and the statute under which Petitioner is detained, 8 U.S.C. § 1225(b)(1), does not afford him the relief that he seeks. *See Dep't of Homeland Security v. Thuraissigiam*, 140 S. Ct. 1959, 1982 (2020) (collecting cases); *Jennings v. Rodriguez*, 138 S. Ct. 830, 842 (2018) (8 U.S.C. § 1225(b)(1) does not "impose[] any limit on the length of detention" or "say[] anything whatsoever about bond hearings"); *Mendoza-Linares v. Garland*, 51 F.4th 1146, 1167 (9th Cir. 2022) ("[A]ny rights [a noncitizen seeking initial entry into the United States and detained under 8 U.S.C. § 1225(b)(1)] may have in regard to removal or admission are purely statutory in nature and are not derived from, or protected by, the Constitution's Due Process Clause."); *accord Zelaya-Gonzalez v. Matusezewski*, 2023 WL 3103811, at *4 (S.D. Cal. Apr. 25, 2023).

To the extent Petitioner requests a hearing before an immigration judge on his I-589 asylum application, his Petition should be denied because he has undergone a credible fear

determination by United States Immigration and Citizenship Services ("USCIS") who found his credible fear claim unsubstantiated, which was affirmed by an immigration judge. Petitioner asserts that he has a pending asylum application; however, as a noncitizen subject to an expedited removal order, Petitioner is not entitled to use a habeas petition to compel a future hearing on his asserted right to asylum. *See Thuraissigiam*, 140 S. Ct. at 1983 (habeas petition based on asserted lack of due process received for alien's asylum claim must be dismissed because there is no habeas jurisdiction for such a claim).

Accordingly, Respondent respectfully requests that the Court dismiss the Petition.

II. RELEVANT FACTUAL BACKGROUND

Petitioner is a "noncitizen" who "is currently detained by Immigration and Customs Enforcement ('ICE') at the Desert View Annex Detention Facility pending removal proceedings." Pet. ¶¶ 1, 14. He was "detained on March 27, 2025, while attending a routine check-in appointment with ICE." *Id.* ¶ 14.

Petitioner alleges that he "entered the United States with a valid B-2 tourist visa on August 24, 2015, and has been residing in the Los Angeles area ever since." *Id.* ¶ 15. In 2023, he was "detained by CBP [Customs and Border Protection], because he inadvertently drove into Mexico following incorrect driving directions generated by his car's GPS." *Id.* He alleges that following the "2023 detention, removal proceeding against Petitioner was initiated – but quickly suspended." *Id.* ¶ 16. He alleges that he applied for asylum in 2024, which is pending and that he is "the primary caretaker for his 19-year-old daughter, who suffers from clinical anxiety disorder." *Id.* ¶¶ 17, 19. He alleges that he "has not been provided a bond hearing before a neutral decisionmaker to determine whether his prolonged detention is justified based on danger or flight risk." *Id.* ¶ 20.

Petitioner omits that when he was detained by CBP on June 17, 2023, in the San Ysidro Port of Entry, he was issued a Notice and Order of Expedited Removal and Credible Fear, Form I-860, pursuant to Immigration and Nationality Act ("INA") § 235(b)(1). *See* Declaration of Deportation Officer Christopher Jenson ("Chen File"), lodged concurrently herewith, at 16. On June 20, 2023, CBP transferred him to

Enforcement and Removal Operations ("ERO") San Diego pending a credible fear interview with USCIS. *Id.* On July 7, 2023, USCIS found Petitioner's credible fear claim unsubstantiated. *Id.* On July 11, 2023, USCIS issued a Notice of Referral to Immigration Judge, Form I-863. *Id.* On July 17, 2023, an immigration judge in Otay Mesa, California, affirmed the negative credible fear finding. *Id.* On September 18, 2023, ERO San Diego served Petitioner with an Order of Supervision, Form I-220B and released him from custody. *Id.* ERO Los Angeles arrested Petitioner on March 27, 2025, and he is to remain in ERO custody pending his removal to China. *Id.* Petitioner does not have a criminal history. *Id.*

Petitioner was found inadmissible to the United States on March 27, 2025, under INA § 212(a)(7)(A)(i)(I):

1. You are not a citizen or national of the United States;
2. You are a native of CHINA (MAINLAND) and a citizen of CHINA (MAINLAND);
3. You applied for admission 06/17/2023 at SAN YSIDRO, CA, USA;
4. You are an immigration not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act[.]

Chen File at 4. Petitioner was therefore subject to removal under INA 235(b)(1) (8 U.S.C. § 1225(b)(1)). *Id.* at 5.

On April 2, 2025, ERO sent a letter to the Consulate General of People's Republic of China requesting a travel document for Petitioner. *Id.* at 8-9.

III. JURISDICTION AND STANDARD OF REVIEW

It is axiomatic that "[t]he district courts of the United States . . . are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute." *Exxon Mobil Corp. v. Allopath Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). "[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present day." *Thuraissigiam*, 140 S. Ct. at 1974 n.20.

Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions. To warrant a grant of writ of habeas corpus, the burden is on the petitioner to prove that his custody is in violation of the Constitution, laws, or treatises of the United States. *See* 28 U.S.C. § 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004); *Snook v. Wood*, 89 F.3d 605, 609 (9th Cir. 1996).

IV. ARGUMENT

A. Petitioner's detention under 8 U.S.C. § 1225(b)(1) does not entitle him to release.

This Court lacks jurisdiction over Petitioner's challenge to his expedited removal to China. The INA, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, established a system for the "expedited removal" of certain noncitizens "who arrive[] in the United States" and are found to be "inadmissible" upon a mandatory inspection by an immigration officer. 8 U.S.C. §§ 1225(a)-(b); *see generally Thuraissigiam*, 140 S. Ct. at 1964-66 (describing these "expedited procedures"). Petitioner was found to be subject to removal under 8 U.S.C. § 1225(b)(1). Chen File at 5.

An inadmissible arriving noncitizen seeking initial entry into the United States without legal status, like Plaintiff, is subject to expedited removal proceedings under the procedures set forth in 8 U.S.C. § 1225(b)(1). A noncitizen who is subject to 8 U.S.C. § 1225(b)(1) proceedings shall be ordered removed without further hearing or review unless he or she indicates an intent to apply for asylum or expresses a fear of persecution. 8 U.S.C. § 1225(b)(1)(A)(i). If a noncitizen indicates an intent to apply for asylum or expresses a fear of persecution, he or she has a legal right to an interview before an asylum officer. 8 U.S.C. §§ 1225(b)(1)(A)(ii), (b)(1)(B)(i). Here, USCIS and an immigration judge found that Petitioner did not have a credible fear of persecution. Chen File at 16.

To the extent Petitioner seeks release from detention, as set forth in detail below, and supported by statute, Supreme Court caselaw, Ninth Circuit caselaw, and caselaw from numerous other jurisdictions, his detention under 8 U.S.C. § 1225(b)(1) does not statutorily afford him the relief he seeks and neither does the Fifth Amendment's Due

Process Clause. *See Jennings*, 138 S. Ct. at 842-46; *Thuraissigiam*, 140 S. Ct. at 1963-64, 1982-83; *Mendoza-Linares*, 51 F.4th at 1167; *Zelaya-Gonzalez*, 2023 WL 3103811, at *4. Accordingly, the Court should reject Petitioner's claim that his detention violates his rights under the Fifth Amendment's Due Process Clause.

In *Jennings*, 138 S. Ct. at 842-46, the Supreme Court assessed the statutory language of 8 U.S.C. § 1225(b), including the phrase contained in 8 U.S.C. § 1225(b)(1)(B)(ii) that "the [noncitizen] shall be detained for further consideration of the application for asylum." In interpreting 8 U.S.C. § 1225(b)(1)(B)(ii), the Supreme Court stated that the word "for" in the statute had the effect of "mandat[ing] detention of noncitizens throughout the completion of applicable proceedings and not just until the moment those proceedings begin." *Id.* at 844-45. The Supreme Court proceeded to consider whether 8 U.S.C. § 1225(b) imposes a time-limit on the length of detention and whether such noncitizens detained under this statutory authority have a statutory right to a bond hearing. *See id.* at 842-46. The Supreme Court held that "nothing in the statutory text [of 8 U.S.C. § 1225(b)] imposes any limit on the length of detention" nor "says anything whatsoever about bond hearings." *Id.* at 842. The Supreme Court proceeded to add that the sole means of release for noncitizens detained pursuant to 8 U.S.C. § 1225(b) is temporary parole at the discretion of the Attorney General under 8 U.S.C. § 1182(d)(5). *Id.* at 844 ("That express exception to detention implies that there are no other circumstances under which [noncitizens] detained under [8 U.S.C.] § 1225(b) may be released.").

Understanding the statutory interpretation of 8 U.S.C. § 1225(b) and the rights it affords noncitizens seeking initial entry, like Petitioner, is relevant and critical because, for "more than a century" now, *see Thuraissigiam*, 140 S. Ct. at 1982, the Supreme Court has held that the rights of such noncitizens are confined exclusively to those granted by Congress to them. *See Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1982) (holding that with regard to "foreigners who have never been naturalized, nor acquired any domicile or residence within the United States, nor even been admitted into the country pursuant to law," "the decisions of executive or administrative officers, acting within powers

expressly conferred by Congress, are due process of law."); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) ("This Court has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative"); *Shaugnessy v. Mezei*, 345 U.S. 206, 212 (1953) (rejecting noncitizens' habeas petitions premised on their claim that their detention without a bond hearing violated their Fifth Amendment Due Process rights because "an 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.'").

The Supreme Court's holding on this topic was reinforced most recently in *Thuraissigiam*, 140 S. Ct. at 1963-64, a habeas action involving a noncitizen, like Petitioner, seeking initial entry to the United States and detained under 8 U.S.C. § 1225(b) who raised a Fifth Amendment Due Process Clause challenge. There, the Supreme Court "reiterated th[e] important rule," *id.* at 1982, that a noncitizen seeking initial entry to the United States "has no entitlement" to any legal rights, constitutional or otherwise, other than those expressly provided by statue. *Id.* at 1963- 64 ("Congress is entitled to set the conditions for an alien's lawful entry into this country and [] as a result [] an alien at the threshold of initial entry cannot claim any greater rights under the Due Process Clause."); *id.* at 1964 (holding that a noncitizen seeking initial entry "has no entitlement to procedural rights other than those afforded by statute"); *id.* at 1983 ("[A]n [noncitizen seeking initial entry to the United States] []has only those rights regarding admission that Congress has provided by statute" and "the Due Process Clause provides nothing more[.]").

Since *Thuraissigiam*, the Ninth Circuit has issued multiple published decisions discussing the ramifications of the Supreme Court's decision for noncitizens seeking initial entry who fall within the ambit of 8 U.S.C. § 1225(b), like Petitioner, and has expressly held that such noncitizens' due process rights are expressly limited to those set forth by statute. In early 2021, the Ninth Circuit stated in *Rauda v. Jennings*, 8 F.4th 1050, 1058 (9th Cir. 2021) that "Congress has already balanced the amount of due process

available to petitioners with the executive's prerogative to remove individuals, and we decline to expand judicial review beyond the parameters set by Congress." Later in 2021, in *Guerrier v. Garland*, 18 F.4th 304, 310 (9th Cir. 2021), the Ninth Circuit reiterated that "in the expedited removal context, a petitioner's due process rights are coextensive with the statutory rights Congress provides."

The Ninth Circuit again reaffirmed its position in 2022 in *Mendoza-Linares*, 51 F.4th at 1167, by explicitly noting the Supreme Court's decision in *Thuraissigiam* and holding that, pursuant thereto, "any rights [a noncitizen seeking initial entry] may have in regard to removal or admission are purely statutory in nature and are not derived from, or protected by, the Constitution's Due Process Clause." The Ninth Circuit proceeded to repeatedly convey this holding throughout the decision. *Id.* at 1164 ("[D]enying all judicial review of constitutional questions concerning admission of an arriving alien does not raise a substantial constitutional question."); *id.* at 1168 ("Mendoza-Linares lacks any constitutionally protected due process rights concerning whether he will be removed or admitted").[1] Because Petitioner has been ordered removed pursuant to 8 U.S.C. § 1225(b)(1), the Petition should be dismissed for lack of jurisdiction.

B. The Petitioner should be dismissed because there is no habeas jurisdiction to challenge an expedited order of removal.

Section 1252(a)(2)(A) imposes a broad prohibition on judicial review of expedited removal determinations, procedures, and policies, with narrow exceptions "provided in subsection (e)" of the same section. 8 U.S.C. § 1252(a)(2)(A). The exceptions in Section 1252(e) do permit "[j]udicial review of [certain expedited removal] determination[s]" in "habeas corpus proceedings," but such review is strictly "limited to determinations of ...

---

[1] Other Circuits have agreed with the Ninth Circuit's due process holding post-*Thuraissigiam*. *See Tazu v. Att'y Gen. United States*, 975 F.3d 292, 300 (3d Cir. 2020) ("Tazu's constitutional right to habeas likely guarantees him no more than the relief he hopes to avoid—release into 'the cabin of a plane bound for [Bangladesh].'"); *Martinez v. LaRose*, 980 F.3d 551, 552 (6th Cir. 2020) ("When an alien attempts to cross our border illegally, the Due Process Clause does not require the government to release him into the United States. Instead, the government may detain him while it arranges for his return home.").

(A) whether the petitioner is an alien, (B) whether the petitioner was ordered removed under [the expedited removal] section, and (C) whether the petitioner ... is an alien lawfully admitted for permanent residence, has been admitted as a refugee under section 1157 of this title, or has been granted asylum under section 1158 of this title." *Id.* § 1252(e)(2)(A)-(C). With respect to the question of whether a petitioner was "ordered removed" pursuant to Section 1225(b), "the court's inquiry" must be "limited to whether such an order in fact was issued and whether it relates to the petitioner"; courts are barred from considering "whether the alien is actually inadmissible or entitled to any relief from removal." 8 U.S.C. § 1252(e)(5).

If none of the exceptions set forth in Section 1252(e) apply, then "'[n]otwithstanding' any other 'habeas corpus provision'—including 28 U.S.C. § 2241—'no court shall have jurisdiction to review' any other 'individual determination' or 'claim arising from or relating to the implementation or operation of an order of [expedited] removal.'" *Thuraissigiam*, 140 S. Ct. at 1966 (quoting 8 U.S.C. § 1252(a)(2)(A)). In short, unless a limited exception applies, Section 1252(a)(2)(A) precludes judicial review of any collateral attack on an order of expedited removal."

Here, all of the determinations that the Court would be authorized to make under § 1252(e)(2), the provision that allows limited judicial review of expedited removal hearings in habeas corpus proceedings, are already resolved. Petitioner is a citizen of China, and he was ordered removed pursuant to expedited removal provisions in § 1225(b). The Court is not entitled to inquire any further into the basis for that expedited removal order. *See* 8 U.S.C. § 1252(e)(5).

In light of the above, the limited questions for which § 1252(e) permits habeas review of expedited removal proceedings are already settled, 8 U.S.C. § 1252(e)(2)(A)-(C), and the Court is otherwise barred from reviewing "any other 'individual determination' or 'claim arising from or relating to the implementation or operation of an order of [expedited] removal,'" *Thuraissigiam*, 140 S. Ct. at 1966 (quoting 8 U.S.C. §

1252(a)(2)(A)). This broad jurisdictional bar necessarily encompasses review of Petitioner's challenges regarding his detention pending his expedited removal.

Even without the jurisdiction-stripping provisions applicable to expedited removal proceedings in particular, the INA would deprive this Court of jurisdiction to adjudicate Petitioner's due process challenge to his detention. That is because the INA, as amended by the REAL ID Act of 2005, vests exclusive jurisdiction over all claims and issues arising out of deportation and removal proceedings in the federal courts of appeals. *See* 8 U.S.C. §§ 1252(a)(5), (b)(9). Specifically, § 1252(a)(5) provides that, "[n]otwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, ... a petition for review filed with an appropriate court of appeals ... shall be the sole and exclusive means for judicial review of an order of removal." *Id.* § 1252(a)(5). Moreover, Section 1252(b)(9) provides as follows:

> Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States ... shall be available only in judicial review of a final order [of removal] under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of Title 28 or any other habeas corpus provision, ... or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

Id. § 1252(b)(9). "[T]aken together, § 1252(a)(5) and § 1252(b)(9) mean that any issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through a petition for review filed with an appropriate court of appeals." *Asylum Seeker Advocacy Project v. Barr*, 409 F. Supp. 3d 221, 224 (S.D.N.Y. 2019). Petitioner has not alleged that has filed a petition for review with the Ninth Circuit Court of Appeals.

Also relevant is § 1252(g), another provision introduced by the REAL ID Act, which provides that "notwithstanding any other provision of law ... including section 2241 of Title 28, or any other habeas corpus provision, ... 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." 8 U.S.C. § 1252(g). "[B]y its plain terms, [Section] 1252(g) strips district courts of jurisdiction over claims attacking the Government's decisions or actions to execute removal orders." *Ramirez v. Barr*, 814 F. App'x 259, 262 (9th Cir. 2020); *Singh v. Barr*, 982 F.3d 778, 782 (9th Cir. 2020) ("Judicial review of an expedited removal order, including the merits of a credible fear determination, is thus expressly prohibited by § 1252(a)(2)(A)(iii).").

Thus, this Court lacks jurisdiction over the Petition to the extent it is a collateral attack on Petitioner's expedited removal order

V. CONCLUSION

For the forgoing reasons, Respondent respectfully requests that the Court deny Petitioner's Petition for Writ of Habeas Corpus.

Dated: June 2, 2025

Respectfully submitted,

BILAL A. ESSALI
United States Attorney
DAVID M. HARRIS
Assistant United States Attorney
Chief, Civil Division
JOANNE S. OSINOFF
Assistant United States Attorney
Chief, Complex and Defensive Litigation Section

/s/ Chung H. Han
CHUNG H. HAN
Assistant United States Attorney

Attorneys for Respondent

Certificate of Compliance under L.R. 11-6.2

Counsel of record for Respondent, certifies that this brief contains 3,498 words, which complies with the word limit of L.R. 11-6.1.