ADAM GORDON
United States Attorney
STEPHEN H. WONG
California Bar No. 212485
Assistant U.S. Attorneys
Office of the U.S. Attorney
880 Front Street, Room 6293
San Diego, CA 92101-8893
Telephone: (619) 546-9464
Facsimile: (619) 546-7751
Email: stephen.wong@usdoj.gov

Attorneys for Respondents

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

KHALIL SHAHIN,

Petitioner,

v.

KRISTI NOEM, Secretary, U.S. Department of Homeland Security; et al.,

Respondents.

Case No.: 25-cv-2496-AGS-KSC

RESPONDENTS' RETURN TO HABEAS PETITION

I. Introduction

Petitioner has filed a habeas petition pursuant to 28 U.S.C. § 2241. For the reasons set forth below, the Court should deny and dismiss the petition.

II. Factual Background[1]

Petitioner is a native of Morocco and citizen of Syria. On November 30, 2024, U.S. Border Patrol agents apprehended Petitioner near Tecate, California, after he unlawfully entered the United States. Petitioner did not have any valid entry documents to enter the United States. Petitioner was determined to be inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I) and placed in expedited removal proceedings pursuant to 8 U.S.C. § 1225(b)(1). Petitioner was subsequently transferred to ICE custody and detained at the Otay Mesa Detention Center.

Pursuant to 8 U.S.C. § 1225(b)(1)(B), Petitioner was interviewed by a USCIS asylum officer to determine whether he had a credible fear of persecution or torture if removed to Morocco or Syria. The interview resulted in a positive determination and on January 20, 2025, the Department of Homeland Security (DHS) issued Petitioner a Notice to Appear (NTA), charging Petitioner as inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I), as an immigrant not in possession of a valid entry document, and 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United States who has not been admitted or paroled. Petitioner remained detained in ICE custody under 8 U.S.C. § 1225(b)(1)(B)(ii), as his detention is mandatory.

On August 4, 2024, an immigration judge held a custody redetermination hearing (that is, a bond hearing) and concluded that the immigration court lacked jurisdiction to redetermine the bond because Petitioner is subject to mandatory detention under § 1225(b)(1)(B)(ii), *see Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019). Petitioner did not appeal the bond denial to the Board of Immigration Appeals (BIA). Petitioner remains subject to mandatory detention under 8 U.S.C. § 1225(b)(1)(B)(ii) as his

[1] The Factual Background is based on the attached exhibits 1-4 which are true copies, with redactions of private information, of documents obtained from ICE counsel.

removal proceedings continue.

III. Argument

A. Petitioner's Claim and Requests are Barred by 8 U.S.C. § 1252.

Petitioner bears the burden of establishing that this Court has subject matter jurisdiction over his claims. *See Ass'n of Am. Med. Colls. v. United States*, 217 F. 3d 770, 778–79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547–48 (1989). As a threshold matter, to the extent Petitioner is challenging the detention authority that he his subjected to (8 U.S.C. § 1225(b)(1)), his claims are jurisdictionally barred under 8 U.S.C. § 1252(g).

Courts lack jurisdiction over any claim or cause of action arising from any decision to commence or adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g) ("[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.") (emphasis added); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) ("There was good reason for Congress to focus special attention upon, and make special provision for, judicial review of the Attorney General's discrete acts of "commenc[ing] proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders"—which represent the initiation or prosecution of various stages in the deportation process."). In other words, § 1252(g) removes district court jurisdiction over "three discrete actions that the Attorney General may take: her 'decision or action' to 'commence proceedings, adjudicate cases, or execute removal orders.'" *Reno*, 525 U.S. at 482 (emphasis removed). Petitioner's claim necessarily arises "from the decision or action by the Attorney General to commence proceedings [and] adjudicate cases," over which Congress has explicitly foreclosed district court jurisdiction. 8 U.S.C. § 1252(g).

Section 1252(g) also bars district courts from hearing challenges to the *method* by which the government chooses to commence removal proceedings, including the decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F. 3d 1194, 1203

(11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars us from questioning ICE's discretionary decisions to commence removal" and also to review "ICE's decision to take [petitioner] into custody to detain him during removal proceedings").

Petitioner's claim stems from his detention during removal proceedings. However, that detention arises from the decision to commence such proceedings against him. *See, e.g.*, *Valecia-Meja v. United States*, No. CV 08–2943 CAS (PJWx), 2008 WL 4286979, at *4 (C.D. Cal. Sept. 15, 2008) ("[T]he decision to detain plaintiff until his hearing before the Immigration Judge arose from this decision to commence proceedings."); *Wang v. United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at *6 (C.D. Cal. Aug. 18, 2010); *Tazu v. Attorney Gen. U.S.*, 975 F. 3d 292, 298–99 (3d Cir. 2020) (holding that 8 U.S.C. §§ 1252(g) and (b)(9) deprive district court of jurisdiction to review action to execute removal order).

Other courts have held, "[f]or the purposes of § 1252, the Attorney General commences proceedings against an alien when 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) (citation omitted). "The Attorney General may arrest the alien against whom proceedings are commenced and detain that individual until the conclusion of those proceedings." *Id.* (citations omitted). "Thus, an alien's detention throughout this process arises from the Attorney General's decision to commence proceedings" and review of claims arising from such detention is barred under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F. 3d 947, 949 (9th Cir. 2007)); *Wang*, 2010 WL 11463156, at *6; 8 U.S.C. § 1252(g).

Thus, the Court should dismiss Petitioner's claim for lack jurisdiction under 8 U.S.C. § 1252.[2]

[2] Petitioner's claims would be more appropriately presented before the Board of Immigration Appeals or appropriate federal court of appeals because they challenge the government's decision or action to detain him, which must be raised before a court of appeals, not this Court. *See* 8 U.S.C. § 1252(b)(9).

B. Petitioner's Detention is Lawful and Mandatory.

Petitioner challenges his detention on the basis that his detention has been prolonged in violation of his Fifth Amendment due process rights. This request should be denied because Petitioner's detention is mandated pursuant to 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 initially placed in the statutory expedited removal process. And § 1225(b)(1) 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").

In *Jennings*, 583 U.S. 281, 296–303 (2018), 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. The Supreme Court noted that 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). The Supreme Court concluded: "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.

Here, Petitioner claims that, despite the statutory prohibition on such relief, the Fifth Amendment's Due Process Clause requires that he be released. ECF No. 1 at ¶¶ 35-39. Petitioner's due process claim, however, is foreclosed by the same statutory constraints discussed above.

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 and he sought a bond hearing for relief. The Supreme Court rejected the petition, concluding that the noncitizen's continued detention did not deprive him of any constitutional right, 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 individuals like Petitioner, 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; *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)).

Since the Supreme Court's decision in *Thuraissigiam*, numerous published decisions have been issued acknowledging *Thuraissigiam*'s impact on the precise Fifth Amendment Due Process Clause issue 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 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).

Simply put, Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii) which provides, absent discretionary parole, that when an alien has a credible fear of persecution, "the alien shall be detained for further consideration of the application for asylum." As the statutory authority Petitioner is detained under does not afford him a right to a determination by this Court as to whether his release is warranted nor a right to a bond hearing before an immigration judge, the Court should 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 107, 140; *Mezei*, 345 U.S. at 212; *Guerrier v. Garland*, 18 F. 4th 304, 310 (9th Cir. 2021).

Even if the Court infers a constitutional right against prolonged mandatory detention, Petitioner's claim still fails. Petitioner has been detained for less than a year. *See* ECF No. 1 at ¶ 18. "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. Apr. 20, 2023) (citation omitted); *see also, e.g., Sanchez-Rivera v. Matuszewski*, No. 22-cv-1357-MMA-JLB, 2023 WL 139801, at *6 (S.D. Cal. Jan. 9, 2023) (detained for three years); *Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS, 2024 WL 711607, at *5 (S.D. Cal. Feb. 21, 2024) (over two-and-a-half years); *Yagao v. Figueroa*, No. 17-cv-2224-AJB-MDD, 2019 WL 1429582, at *2 (S.D. Cal. Mar. 29, 2019) (two years). Petitioner's current detention falls short of the length courts have found to raise due process concerns.

Though the length of detention is considered the most important factor, courts have also considered the likely duration of future detention and any delay in the removal

proceedings by the petitioner or the government to determine whether "detention has become so unreasonable as to require an initial bond hearing." *See Sanchez-Rivera*, 2023 WL 139801, at *6.[3] Neither of these factors raise due process concerns either. Petitioner's removal proceedings are underway, and he is scheduled to appear for a hearing on October 29, 2025. There is no indication that any final decision by the immigration judge would be delayed. And there is no indication of any delay in the removal proceedings by the government. On this record, the Court cannot find that "detention has become so unreasonable as to require an initial bond hearing." *Sanchez-Rivera*, 2023 WL 139801, at *6.

IV. CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court dismiss this action.

DATED: October 14, 2025

Respectfully submitted,

ADAM GORDON
United States Attorney

s/ Stephen H. Wong
STEPHEN H. WONG
Assistant United States Attorney
Attorneys for Respondents

[3] In analyzing whether detention during removal proceedings has become unreasonably prolonged, courts in this district under these circumstances typically apply the test in *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022). *See Sanchez-Rivera*, 2023 WL 139801, at *5 ("while the *Mathews* factors may be well-suited to determining whether due process requires a second bond hearing, they are not particularly dispositive of whether prolonged mandatory detention has become unreasonable in a particular case."); *see also Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022) ("To determine whether § 1226(c) detention has become unreasonable, the Court will look to the total length of detention to date, the likely duration of future detention, and the delays in the removal proceedings caused by the petitioner and the government.").