ADAM GORDON
United States Attorney
STEPHANIE A. SOTOMAYOR, IL Bar No. 6325877
Assistant U.S. Attorney
Office of the U.S. Attorney
880 Front Street, Room 6293
San Diego, CA 92101-8893
Tel/Fax: (619) 546-9590/7751
Email: Stephanie.Sotomayor@usdoj.gov
Attorneys for Respondents

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

D.D., Petitioner, v. Christopher J. LAROSE, Senior Warden, Otay Mesa Detention Center, et al. Respondents.	Case No.: 25-cv-2581-BJC-JLB **RESPONDENTS' RESPONSE IN OPPOSITION TO PETITIONER'S HABEAS PETITION AND APPLICATION FOR TEMPORARY RESTRAINING ORDER**

I. Introduction

Petitioner has filed a habeas petition and a motion for temporary restraining order. For the reasons set forth below, the Court should deny Petitioner's request for interim relief and dismiss the petition.

II. Factual and Procedural Background[1]

Petitioner is a native and citizen of Iran. On March 2, 2025, Petitioner illegally entered the United States at or near Roma, Texas. Petitioner did not then have any valid entry documents to enter the United States, and he was subsequently apprehended. Petitioner was determined to be inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) and placed in expedited removal proceedings pursuant to 8 U.S.C. § 1225(b)(1). Petitioner was detained by U.S. Customs and Border Protection and subsequently transferred to ICE custody and detained at the Otay Mesa Detention Center. On March 20, 2025, 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 Iran. The interview resulted in a positive determination.

On June 4, 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)(6)(A)(i) (as an alien present in the United States without being admitted or paroled), and 1182(a)(7)(A)(i)(I) (as an immigrant not in possession of a valid entry document). The filing of the NTA initiated removal proceedings against Petitioner, and those proceedings remain ongoing. Within his removal proceedings under § 1229a, Petitioner has the opportunity to apply for relief from removal before an immigration judge (IJ), including asylum under 8 U.S.C. § 1158, withholding of removal under 8 U.S.C. § 1231(b)(3), and relief under the Convention Against Torture. On September 27, 2025, an IJ granted Petitioner's motion to advance for earlier merits hearing date.

[1] The attached exhibits are true copies, with redactions of private information, of documents obtained from ICE counsel.

Petitioner is set to appear before an IJ for an individual hearing on his applications for relief from removal on November 7, 2025.

Petitioner remains detained in ICE custody under 8 U.S.C. § 1225(b)(1)(B)(ii), as his detention is mandatory.

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 of jurisdiction under 8 U.S.C. § 1252.[2]

B. Petitioner Fails to Establish Entitlement to Interim Injunctive Relief.

Alternatively, Petitioner's motion should be denied because he has not established that he is entitled to interim injunctive relief. Petitioner cannot establish that he is likely to succeed on the underlying merits, there is no showing of irreparable harm, and the equities do not weigh in his favor. In general, the showing required for a temporary restraining order is the same as that required for a preliminary injunction. *See Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839 (9th Cir. 2001). To prevail on a motion for a temporary restraining order, a plaintiff must "establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); s*ee Nken v. Holder*, 556 U.S. 418, 426 (2009). Plaintiffs must demonstrate a "substantial case for relief on the merits." *Leiva-Perez v. Holder*, 640 F.3d 962, 967-68 (9th Cir. 2011). When "a plaintiff has failed to show the likelihood of success on the merits, we need not consider the remaining three [*Winter* factors]." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015).

The final two factors required for preliminary injunctive relief—balancing of the harm to the opposing party and the public interest—merge when the Government is the opposing party. *See Nken*, 556 U.S. at 435. The Supreme Court has specifically acknowledged that "[f]ew interests can be more compelling than a nation's need to ensure its own security." *Wayte v. United States*, 470 U.S. 598, 611 (1985); *see also*

---

[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). Petitioner concedes he has made no attempt to utilize this legal avenue. *See* ECF No 2 at 6, footnote 3.

United States v. Brignoni-Ponce, 422 U.S. 873, 878-79 (1975); *New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977); *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1220-21 (D.C. Cir. 1981); *Maharaj v. Ashcroft*, 295 F.3d 963, 966 (9th Cir. 2002) (movant seeking injunctive relief "must show either (1) a probability of success on the merits and the possibility of irreparable harm, or (2) that serious legal questions are raised and the balance of hardships tips sharply in the moving party's favor.") (quoting *Andreiu v. Ashcroft*, 253 F.3d 477, 483 (9th Cir. 2001)).

a. No likelihood of Success on the Merits.

Likelihood of success on the merits is a threshold issue. *See Garcia*, 786 F.3d at 740. Petitioner cannot establish that he is likely to succeed on the underlying merits of his claims because he is properly detained under 8 U.S.C. § 1231(a).

Petitioner challenges his detention on the basis that his detention has been prolonged in violation of his Fifth Amendment due process rights. ECF No. 2 at 7:1, 9:5. This request should be denied because Petitioner's detention is mandated pursuant to 8 U.S.C. § 1225(b)(1).

Petitioner suggests he is detained pursuant to 8 U.S.C. § 1225(b)(2). *See* ECF No. 2 at 9, footnote 4; 11:11. However, as Petitioner was originally placed in expedited proceedings and then transferred to full proceedings, Petitioner remains subject to mandatory detention under § 1225(b)(1)(B)(ii) until his removal proceedings conclude. *See Matter of M-S-*, 27 I. & N. Dec. 509 (AG 2019).[3]

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,

[3] As Petitioner is subject to mandatory detention under § 1225(b)(1) and not § 1225(b)(2), his reliance on recent decisions issued by the Board of Immigration Appeals (BIA) is inapposite. *See Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025) (analyzing detention authority under § 1225(b)(2)); *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

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 is an arriving alien. 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"); *see also* ECF No. 2, 2:15-17.

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 ¶¶ 44-46. 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 a little over seven months. *See* ECF No. 1 at ¶ 19. "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 thirty-one-week detention falls significantly 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.[4] Neither of these factors raise due process concerns either.

[4] Though Petitioner cites *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) in his petition [ECF No. 1, ¶ 40], courts in this district have declined to apply the *Mathews* test under these circumstances and have instead applied 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

Petitioner's removal proceedings are underway, and he is scheduled to appear for an individual hearing on his relief applications before an IJ on November 7, 2025. There is no indication that any final decision by the IJ would be delayed. In fact, the IJ recently advanced the individual hearing date. 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.

Accordingly, Petitioner cannot show entitlement to relief.

b. Irreparable Harm Has Not Been Shown.

To prevail on his request for interim injunctive relief, Petitioner must demonstrate "immediate threatened injury." *Caribbean Marine Services Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citing *Los Angeles Memorial Coliseum Commission v. National Football League*, 634 F.2d 1197, 1201 (9th Cir. 1980)). Merely showing a "possibility" of irreparable harm is insufficient. *See Winter*, 555 U.S. at 22. And detention alone is not an irreparable injury. *See Reyes v. Wolf*, No. C20-0377JLR, 2021 WL 662659, at *3 (W.D. Wash. Feb. 19, 2021*), aff'd sub nom. Diaz Reyes v. Mayorkas*, No. 21-35142, 2021 WL 3082403 (9th Cir. July 21, 2021). Further, "[i]ssuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with [the Supreme Court's] characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*, 555 U.S. at 22. Here, because Petitioner's alleged harm "is essentially inherent in detention, the Court cannot weigh this strongly in favor of" Petitioner. *Lopez Reyes v. Bonnar*, No 18-cv-07429-SK, 2018 WL 747861 at *10 (N.D.

---

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.").

Cal. Dec. 24, 2018).

c. Balance of Equities Does Not Tip in Petitioner's Favor.

It is well settled that the public interest in enforcement of the United States' immigration laws is significant. *See, e.g.*, *United States v. Martinez-Fuerte*, 428 U.S. 543, 551-58 (1976); *Blackie's House of Beef*, 659 F.2d at 1221 ("The Supreme Court has recognized that the public interest in enforcement of the immigration laws is significant.") (citing cases); *see also Nken*, 556 U.S. at 435 ("There is always a public interest in prompt execution of removal orders: The continued presence of an alien lawfully deemed removable undermines the streamlined removal proceedings IIRIRA established, and permits and prolongs a continuing violation of United States law.") (internal quotation omitted). Moreover, "[u]ltimately the balance of the relative equities 'may depend to a large extent upon the determination of the [movant's] prospects of success.'" *Tiznado-Reyna v. Kane*, Case No. CV 12-1159-PHX-SRB (SPL), 2012 WL 12882387, at * 4 (D. Ariz. Dec. 13, 2012) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 778 (1987)). Here, as explained above, Petitioner cannot succeed on the merits of his claims. The balancing of equities and the public interest weigh heavily against granting Petitioner equitable relief.

IV. Conclusion

For the foregoing reasons, Respondents respectfully request that the Court deny the application for a temporary restraining order and dismiss this action for lack of a basis for the habeas claims.

DATED: October 8, 2025

ADAM GORDON
United States Attorney

s/ Stephanie A. Sotomayor
STEPHANIE A. SOTOMAYOR
Assistant United States Attorney
Attorneys for Respondents