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**UNITED STATES DISTRICT COURT**

**SOUTHERN DISTRICT OF CALIFORNIA**

HASMAT FAIZI,

Petitioner,

v.

CHRISTOPHER J. LAROSE, et al.,

Respondents.

Case No. 25-cv-02974 JO MSB

**RETURN IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS**

## I. INTRODUCTION

Petitioner requests that this Court order his immediate release from Immigration and Customs Enforcement (ICE) custody or require that he be afforded a bond hearing. As an arriving alien found to have a credible fear of persecution, however, Petitioner's detention is mandated by 8 U.S.C. § 1225(b)(1)(B)(ii). Moreover, Petitioner's individual hearing was commenced on September 4, 2025, and is scheduled to be completed on December 19, 2025. Accordingly, the Court should deny Petitioner's requests for relief.

## II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a native and citizen of Afghanistan. ECF No. 1 at ¶ 3.[1] On or about December 26, 2024, Petitioner illegally entered the United States from Mexico. He was apprehended with a group of 61 other individuals and detained at the Otay Mesa Detention Center. Petitioner did not then have any valid entry documents to enter the United States. 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). On January 30, 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 Afghanistan. The interview resulted in a positive determination. ECF No. 1 at ¶ 19.

On February 2, 2025, Petitioner was issued a Notice to Appear (NTA), charging him 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). NTA, attached as Exhibit 1.[2] The filing of the NTA initiated removal proceedings against Petitioner, and those proceedings remain ongoing. Within his removal proceedings under § 1229a,

[1] Petitioner's A number as written on the petition is incorrect. Petitioner's counsel provided the correct number on November 5, 2025.

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

Petitioner has the opportunity to apply for relief from removal before an immigration judge, 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 February 18, 2025, Petitioner had his initial master calendar hearing before an immigration judge (IJ). Notice of In-Person Hearing, attached as Exhibit 2. On February 27, 2025, Petitioner filed a Form I-589, application for asylum and withholding of removal. *Id.* at ¶ 23. On March 5, 2025, a master calendar hearing was held, wherein Petitioner's individual merits hearing was initially set for July 10, 2025. On June 25, 2025, that hearing was reset to August 26, 2025, when his case was reassigned to a different IJ. *Id.* at ¶ 24-25. On June 25, 2025, Petitioner submitted 195 pages of evidence in support of his application for relief. Petitioner attempted to file a second submission of evidence, totaling over 780 pages, but it was rejected by the immigration court for improper formatting. Rejection Notice, attached as Exhibit 6. Petitioner successfully filed the second submission of evidence on June 30, 2025. On July 3, 2025, Petitioner filed a prehearing statement in support of his merits hearing. On August 11, 2025, Petitioner submitted amendments to his Form I-589, application for asylum and withholding of removal.

On August 26, 2025, the assigned IJ sua sponte continued Petitioner's hearing to September 4, 2025, due to a personal matter. On August 28, 2025, Petitioner filed a motion to accept the untimely submission of evidence, and additional evidence in support of his application for relief. Motion, attached as Exhibit 9. On September 4, 2025, Petitioner's individual merits hearing commenced but, after a lengthy direct examination by Petitioner's counsel, was not completed within the allocated time. ECF No. 1 at ¶ 26. Petitioner's individual hearing is now scheduled to be completed on December 19, 2025. *Id.*

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

## III. STATUTORY BACKGROUND

### A. Mandatory Detention Under 8 U.S.C. § 1225

Section 1225 applies to an "applicant for admission," defined as an "alien present in the United States who has not been admitted" or "who arrives in the United States." 8 U.S.C. § 1225(a)(1). "[A]pplicants for admission fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Section 1225(b)(1) applies to arriving aliens and "certain other" aliens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid document." *Id.* (citing 8 U.S.C. § 1225(b)(1)(A)(i)). These aliens are generally subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if "the alien indicates an intention to apply for asylum . . . or a fear of persecution," immigration officers will refer the alien for a credible fear interview. 8 U.S.C. § 1225(b)(1)(A)(ii). "If the officer determines at the time of the interview that [the] alien has a credible fear of persecution . . . , the alien *shall be detained* for further consideration of the application for asylum." 8 U.S.C. § 1225(b)(1)(B)(ii) (emphasis added). If the alien does not indicate an intent to apply for asylum, does not express a fear of persecution, or is "found not to have such a fear," they "shall be detained . . . until removed" from the United States. 8 U.S.C. §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

## IV. ARGUMENT

### A. Petitioner's Claims 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. Coll. 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 by 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 [AG] 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 claims necessarily arise "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 [plaintiff] into custody to detain him during removal proceedings").

Petitioner's claims stem from his detention during removal proceedings, which arises from the decision to commence such proceedings against him. *See, e.g.*, *Valecia-Meja v. United States*, No. 08-2943 CAS (PJWz), 2008 WL 4286979, at *4 (C.D. Cal. Sept. 15, 2008) ("The 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. Att'y 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).

"For 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. 08-2941 DSF (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). "The Attorney General may arrest the alien against whom proceedings are commenced and detain that individual until the conclusion of those proceedings." *Id.* at *3. "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). Accordingly, the Court should dismiss Petitioner's claims for lack of jurisdiction under 8 U.S.C. § 1252.

**B. Petitioner's Detention is Lawful and Mandatory.**

Petitioner challenges his detention on the basis that it has been prolonged in violation of his Fifth Amendment due process rights. This request should be denied because Petitioner's detention is mandated by 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 is an arriving alien. And that statute mandates detention when an immigration officer determines that the alien has a credible fear of persecution. *See* 8 U.S.C. § 1225(b)(1)(B)(ii) ("If the officer determines at the time of the interview that [the] alien has a credible fear of persecution . . . , the alien *shall be detained* for further consideration of the application for asylum.") (emphasis added); *see also Matter of M-*

*S*, 27 I. & N. Dec. 509, 519 (AG 2019) ("all aliens transferred from expedited to full [removal] proceedings after establishing a credible fear are ineligible for bond").

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. In other words, neither 8 U.S.C. § 1225(b)(1) nor § 1225(b)(2) "impose[] any limit on the length of detention" and "neither § 1225(b)(1) nor § 1225(b)(2) say[] anything whatsoever about bond hearings." *Id.* The Supreme Court added that the sole means of release for noncitizens detained pursuant to 8 U.S.C. §§ 1225(b)(1) or (b)(2) prior to removal from the United States is temporary parole at the discretion of the Attorney General under 8 U.S.C. § 1182(d)(5). *Id.* at 300 ("That express exception to detention implies that there are no *other* circumstances under which aliens detained under [8 U.S.C.] § 1225(b) may be released.") (emphasis in original). "In sum, [8 U.S.C.] §§ 1225(b)(1) and (b)(2) mandate detention of aliens throughout the completion of applicable proceedings[.]" *Id.* at 302.

Here, Petitioner claims that, despite the statutory prohibition on such relief, the Fifth Amendment's Due Process Clause requires that he be immediately released. ECF No. 1 at ¶¶ 36-37. Petitioner's due process claim, however, is foreclosed by the 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. The Supreme Court rejected the petition, concluding that the noncitizen's continued detention did not deprive him of any due process rights, stating: "[A]n alien on the threshold of initial entry stands on a different footing: 'Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.'" *Id.* at 212 (citation omitted).

In *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 138-40 (2020), the Supreme Court once again addressed the due process rights of 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; *see also id.* at 140 ("[A]n alien in respondent's position has only those rights regarding admission that Congress has provided by statute."). The Supreme Court noted that its determination was supported by "more than a century of precedent." *Id.* at 138 (citing *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892); *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950); *Mezei*, 345 U.S. at 212; *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)).

Since the Supreme Court's decision in *Thuraissigiam*, numerous published decisions have acknowledged *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); *see also Mendoza-Linares v. Garland*, No. 21-CV-1169 BEN (AHG), 2024 WL 3316306, *2 (S.D. Cal. June 10, 2024) ("[T]he Court finds that Petitioner has no Fifth Amendment right to a bond hearing pending his removal proceedings."); *Zelaya-Gonzalez v. Matuszewski*, No. 23-CV-151 JLS (KSC), 2023 WL 3103811. *3 (S.D. Cal. Apr. 25, 2023) (same).

In short, 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 immediate release or 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*, 18 F.4th at 310.[3]

**C. Petitioner's Detention is Not Unconstitutionally Prolonged.**

Petitioner requests that the Court apply the six-factor balancing test discussed in *Kydyrali v. Wolf*, 499 F. Supp. 3d 768 (S.D. Cal. 2020). ECF No. 1 at ¶¶ 39-40. As Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(1), and the Court need not address that test. *See Kydyrali*, 499 F. Supp. 3d at 769 (noting petitioner was initially granted parole, but that decision was later revoked). Instead, the Court should apply the three-factor balancing test from *Lopez v. Garland*, 631 F. Supp. 3d 870 (E.D. Cal. 2022). The *Lopez* three-factor test includes an evaluation of (1) the total length of detention, (2) the likely duration of future detention, and (3) delays in the removal proceedings caused by the petitioner and the government. *Lopez*, 631 F.Supp.3d at 879.

First, Petitioner's approximate 10-month detention does not favor granting habeas relief. Courts in this district have found detention for much longer periods is required to be unconstitutionally prolonged. *See Durand v. Allen*, 23-cv-00279-RBM-BGS, 2024 WL 711607 at *5 (S.D. Cal. Feb. 21, 2024) (thirty-two months); *Sibomana v. LaRose*, No. 22-cv-933-LL-NLS, 2023 WL 3028093, at *4 (S.D. Cal. Apr. 20, 2023) (nineteen months); *Sanchez-Rivera v. Matuszewski*, No. 22-cv-1357-MMA-JLB, 2023 WL 139801 at *6 (S.D. Cal. Jan. 9, 2023) (three years); *Kydyrali*, 499 F. Supp. 3d at 773 (twenty-seven months). Petitioner's relatively short detention does not compare to other cases granting habeas relief. *See, e g., Yagao v. Figueroa*, No. 17-CV-2224-AJB-MDD, 2019 WL 1429582, at *1 (S.D. Cal. Mar. 29, 2019) (affording petitioner a bond hearing after 42 months of detention pending removal proceedings). Notably, "the

[3] Petitioner's reliance and arguments that his continued detention violates his due process rights under *Zadvydas v. Davis*, 533 U.S. 678 (2001), is misplaced. Both Section 1231 and *Zadvydas* plainly govern the detention of a noncitizen *subject to a final order of removal* – which Petitioner is not. *See Zadvydas*, 533 U.S. at 682. ("When an alien has been found to be unlawfully present in the United States and a final order of removal has been entered . . .").

length of detention . . . is the most important factor." *Banda*, 385 F. Supp. 3d at 1118. At this stage, the length of Petitioner's detention is reasonable. *See* S.D. Cal. Case No. 25-cv-02581-BJC-JLB, ECF No. 10 at 8:22-24 (concluding on very similar facts that "Petitioner's continued detention, at this point, is not so unreasonable that it requires a bond hearing to meet due process standards").

Second, the likely duration of future detention weighs against Petitioner. There is no reason to believe that once Petitioner's individual hearing is concluded, the IJ will not issue an order resolving Petitioner's asylum application. *Id.* at 8:12-15 ("Although the outcome of this hearing is yet to be determined, this fact does not support Petitioner's claim that his detention will continue for a significant time in the future. At this juncture, the Court declines to engage in the speculation that Petitioner relies on in his argument on this point.").

Finally, although there have been two or three continuances during Petitioner's removal proceedings, the record does not reflect any unreasonable delays in processing Petitioner's case. *See* S.D. Cal. Case No. 25-cv-02581-BJC-JLB, ECF No. 10 at 8:16-18 (finding "the delay factor is neutral" even though the petitioner's hearings "were continued multiple times by the immigration judge"). In fact, Petitioner arguably benefitted by utilizing the continuances to amend his application and submit additional evidence in support of his application.

In short, even if the Court were to consider a balancing test, Petitioner's detention is not unconstitutional at this stage.

**D. Conditions of Confinement Allegations are Not Proper Habeas Claims.**

To the extent Petitioner asserts claims regarding conditions of his confinement, the Court lacks jurisdiction over such claims because they do not challenge the lawfulness of his custody. An individual may seek habeas relief under 28 U.S.C. § 2241 if he is "in custody" under federal authority "in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c). But habeas relief is available to challenge only the legality or duration of confinement. *Pinson v. Carvajal*, 69 F.4th

1059, 1067 (9th Cir. 2023); *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979); *Dep't of Homeland Security v. Thraissigiam*, 591 U.S. 103, 117 (2020) (noting the writ of habeas corpus historically "provide[s] a means of contesting the lawfulness of restraint and securing release"). The Ninth Circuit squarely explained how to decide whether a claim sounds in habeas jurisdiction: "[O]ur review of the history and purpose of habeas leads us to conclude the relevant question is whether, based on the allegations in the petition, release is *legally required* irrespective of the relief requested." *Pinson*, 69 F.4th at 1072 (emphasis in original); *see also Nettles v. Grounds*, 830 F.3d 922, 934 (9th Cir. 2016) (noting the key inquiry is whether success on the petitioner's claim would "necessarily lead to immediate or speedier release"). Here, Petitioner's claims regarding the conditions of his confinement do not arise under § 2241. *See Nettles*, 830 F.3d at 933 ("We have long held that prisoners may not challenge mere conditions of confinement in habeas corpus."); *Giron Rodas v. Lyons*, No. 25cv1912-LL-AHG, 2025 WL 2300781, at *3 (S.D. Cal. Aug. 1, 2025) ("Like in *Pinson*, the Court lacks jurisdiction over Petitioner's § 2241 habeas petition since it cannot be fairly read as attacking 'the legality or duration of confinement.'") (quoting *Pinson*, 69 F.4th at 1065); *Guselnikov v. Noem*, No. 25-cv-1971-BTM-KSC, 2025 WL 2300873, at *1 (S.D. Cal. Aug. 8, 2025) (finding petitioners' claims did not arise under § 2241 because they were not arguing they were unlawfully in custody and receiving the requested relief would not entitle them to release).

## V. CONCLUSION

For the reasons stated above, the Court should deny the petition.

DATED: November 7, 2025

Respectfully submitted,
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