

1 ADAM GORDON
United States Attorney
2 JULIET M. KEENE
NM SBN 126365
3 ERIN M. DIMBLEBY
California State Bar No. 323359
4 Assistant U.S. Attorneys
Office of the U.S. Attorney
5 880 Front Street, Room 6293
San Diego, CA 92101-8893
6 Telephone: (619) 546-6768/6987
Email: Juliet.Keene@usdoj.gov
7 Email: Erin.Dimbleby@usdoj.gov

8 Attorneys for Respondents

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 ALBINA RAEVA,
12 Petitioner,
13 v.
14 ALEJANDRO MAYORKAS, et al.,
15

Case No.: 25-cv-3175-JO-KSC

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

Date: November 24, 2025
Time: 9:30 a.m.
Courtroom: 4C

**NO ORAL ARGUMENT
REQUESTED**

16
17
18 **I. INTRODUCTION**

19 Petitioner requests that this Court order her release from Immigration and
20 Customs Enforcement (ICE) custody or require that she be afforded a bond hearing
21 before an Immigration Judge. As an arriving alien whose asylum application was
22 denied on the merits, Petitioner's detention is mandated by 8 U.S.C. §
23 1225(b)(1)(B)(iii)(IV). Accordingly, the Court should deny the Petition at this time.
24

25 **II. FACTUAL AND PROCEDURAL BACKGROUND¹**

26 Petitioner is a native of Uzbekistan and citizen of Russia. See ECF 7-1, ¶ 1. On
27 or about December 25, 2024, Petitioner presented for entry at the San Ysidro port of

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

1 entry and applied for admission to the United States. *See* Ex. 1, I-213. Petitioner did
2 not have any valid entry documents to enter the United States and was thus determined
3 to be inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I). DHS issued a Notice to
4 Appear, which initiated removal proceedings under 8 U.S.C. § 1229a, and detained
5 Petitioner pursuant to 8 U.S.C. § 1225. *See* Ex. 2, NTA. On May 30, 2025, after a full
6 hearing on the merits of her applications for relief from removal, an immigration judge
7 (IJ) entered an Order denying Petitioner’s applications for relief and ordered her
8 removed to Russia. *See* Ex. 3, Immigration Judge Order. On June 6, 2025, Petitioner
9 appealed the IJ’s decision to the Board of Immigration Appeals (BIA). Both DHS and
10 Petitioner have filed respective appeal briefs, and the appeal remains pending. *See* Ex.
11 4.² Petitioner is not subject to a final order of removal and, while her removal
12 proceedings continue, she continues to be subject to mandatory detention pursuant to
13 8 U.S.C. § 1225. She has been detained for approximately 11 months.

14 III. STATUTORY BACKGROUND

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

16 Section 1225 applies to an “applicant for admission,” defined as an “alien
17 present in the United States who has not been admitted” or “who arrives in the United
18 States.” 8 U.S.C. § 1225(a)(1). “[A]pplicants for admission fall into one of two
19 categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).”
20 *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Petitioner is an “arriving alien,” with
21 no history of residency in the United States.

22 Section 1225(b)(1) applies to arriving aliens and “certain other” aliens “initially
23 determined to be inadmissible due to fraud, misrepresentation, or lack of valid
24 document.” *Id.* (citing 8 U.S.C. § 1225(b)(1)(A)(i)). These aliens are generally subject
25 to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if “the alien

26
27 ² As additional background and pursuant to this Court’s Order dated November 17,
28 2025 (ECF No. 2) requiring Respondents to attach “Petitioner’s immigration records
necessary for adjudication of this habeas petition,” Respondents also attach records
reflecting Petitioner’s immigration proceedings.

1 indicates an intention to apply for asylum . . . or a fear of persecution,” immigration
2 officers will refer the alien for a credible fear interview. 8 U.S.C. § 1225(b)(1)(A)(ii).
3 “If the officer determines at the time of the interview that [the] alien has a credible fear
4 of persecution . . . , the alien *shall be detained* for further consideration of the
5 application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii) (emphasis added). If the alien
6 does not indicate an intent to apply for asylum, does not express a fear of persecution,
7 or is “found not to have such a fear,” they “shall be detained . . . until removed” from
8 the United States. 8 U.S.C. §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

9
10 **IV. ARGUMENT**

11 **A. Petitioner’s Claims are Barred by 8 U.S.C. § 1252.**

12 Petitioner bears the burden of establishing that this Court has subject matter
13 jurisdiction over her claims. *See Ass’n of Am. Med. Coll. v. United States*, 217 F.3d
14 770, 778-79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989). As
15 a threshold matter, to the extent Petitioner is challenging the detention authority that
16 she is subjected to (8 U.S.C. § 1225(b)(1)), those claims are jurisdictionally barred by
17 8 U.S.C. § 1252.

18 In general, courts lack jurisdiction to review a decision to commence or
19 adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g)
20 (“[N]o court shall have jurisdiction to hear any cause or claim by or on behalf of any
21 alien arising from the decision or action by the Attorney General to commence
22 proceedings, adjudicate cases, or execute removal orders.”); *Limpin v. United States*,
23 828 Fed. App’x 429 (9th Cir. 2020) (holding district court properly dismissed under
24 8 U.S.C. § 1252(g) “because claims stemming from the decision to arrest and detain an
25 alien at the commencement of removal proceedings are not within any court’s
26 jurisdiction”). In other words, § 1252(g) removes district court jurisdiction over “three
27 discrete actions that the Attorney may take: [his] ‘decision or action’ to ‘commence
28 proceedings, adjudicate cases, or execute removal orders.’” *Reno v. Am.-Arab*
Anti-Discrimination Comm., 525 U.S. 471, 483 (1999) (emphasis removed). Plainly

1 stated, Petitioner requests that this Court review a decision to dismiss her 240
2 proceedings, her placement into expedited removal, and the type of review she receives
3 over her asylum claims. Thus, Petitioner’s claims necessarily arise “from the decision
4 or action by the Attorney General to commence proceedings [and] adjudicate cases,”
5 over which Congress has explicitly foreclosed district court jurisdiction. 8 U.S.C. §
6 1252(g).

7 Section 1252(g) also bars district courts from hearing challenges to the *method*
8 by which the government chooses to commence removal proceedings, including the
9 decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194,
10 1203 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s
11 discretionary decisions to commence removal” and also to review “ICE’s decision to
12 take [plaintiff] into custody to detain him during removal proceedings”).

13 Other courts have held, “[f]or the purposes of § 1252, the Attorney General
14 commences proceedings against an alien when the alien is issued a Notice to Appear
15 before an immigration court.” *Herrera-Correra v. United States*,
16 No. 08-2941 DSF (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). “The
17 Attorney General may arrest the alien against whom proceedings are commenced and
18 detain that individual until the conclusion of those proceedings.” *Id.* at *3. “Thus, an
19 alien’s detention throughout this process arises from the Attorney General’s decision to
20 commence proceedings” and review of claims arising from such detention is barred
21 under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)); *Wang*
22 *v. United States*, No. CV 10-0389 SVW (RCX), 2010 WL 11463156, at *6 (C.D. Cal.
23 Aug. 18, 2010); 8 U.S.C. § 1252(g).

24 Moreover, under 8 U.S.C. § 1252(b)(9), “[j]udicial review of all questions of law
25 and fact . . . arising from any action taken or proceeding brought to remove an alien
26 from the United States under this subchapter shall be available only in judicial review
27 of a final order under this section.” Further, judicial review of a final order is available
28 only through “a petition for review filed with an appropriate court of appeals.”

1 8 U.S.C. § 1252(a)(5). The Supreme Court has made clear that § 1252(b)(9) is “the
2 unmistakable ‘zipper’ clause,” channeling “judicial review of all” “decisions and
3 actions leading up to or consequent upon final orders of deportation,” including
4 “non-final order[s],” into proceedings before a court of appeals. *Reno*, 525 U.S. at 483,
5 485; *see J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (noting § 1252(b)(9)
6 is “breathhtaking in scope and vise-like in grip and therefore swallows up virtually all
7 claims that are tied to removal proceedings”). “Taken together, § 1252(a)(5) and
8 § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-
9 related activity can be reviewed *only* through the [petition for review] PFR process.”
10 *J.E.F.M.*, 837 F.3d at 1031 (“[W]hile these sections limit *how* immigrants can challenge
11 their removal proceedings, they are not jurisdiction-stripping statutes that, by their
12 terms, foreclose *all* judicial review of agency actions. Instead, the provisions channel
13 judicial review over final orders of removal to the courts of appeal.”) (emphasis in
14 original); *see id.* at 1035 (“[Sections] 1252(a)(5) and [(b)(9)] channel review of all
15 claims, including policies-and-practices challenges . . . whenever they ‘arise from’
16 removal proceedings.”).

17 Critically, “1252(b)(9) is a judicial channeling provision, not a claim-barring
18 one.” *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D)
19 provides that “[n]othing . . . in any other provision of this chapter . . . shall be construed
20 as precluding review of constitutional claims or questions of law raised upon a petition
21 for review filed with an appropriate court of appeals in accordance with this section.”
22 *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) (“[J]urisdiction to review
23 such claims is vested exclusively in the courts of appeals[.]”). The petition-for-review
24 process before the court of appeals ensures that aliens have a proper forum for claims
25 arising from their immigration proceedings and “receive their day in court.” *J.E.F.M.*,
26 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*,
27 627 F.3d 58, 61 (2d Cir. 2010) (“The REAL ID Act of 2005 amended the [INA] to
28 obviate . . . Suspension Clause concerns” by permitting judicial review of

1 “nondiscretionary” BIA determinations and “all constitutional claims or questions of
2 law”). These provisions divest district courts of jurisdiction to review both direct and
3 indirect challenges to removal orders, including decisions to detain for purposes of
4 removal or for proceedings. *See Jennings v. Rodriguez*, 583 U.S. 281, 294–95 (2018)
5 (stating section 1252(b)(9) includes challenges to the “decision to detain [an alien] in
6 the first place or to seek removal”).

7 Here, Petitioner’s claims stem from her detention during removal proceedings.
8 However, that detention arises from a Court Order determining that her asylum claims
9 lack merit and DHS’s corresponding decision to removal pursuant to the Court’s Order.
10 *See, e.g., Valecia-Meja v. United States*, No. 08-2943 CAS (PJWz), 2008 WL 4286979,
11 at *4 (C.D. Cal. Sept. 15, 2008) (“The decision to detain plaintiff until his hearing before
12 the Immigration Judge arose from this decision to commence proceedings.”); *Wang*,
13 2010 WL 11463156, at *6; *Tazu v. Att’y Gen. U.S.*, 975 F.3d 292, 298–99 (3d Cir. 2020)
14 (holding that 8 U.S.C. § 1252(g) and (b)(9) deprive district court of jurisdiction to
15 review action to execute removal order).

16 To the extent that Petitioner’s claims arise from the decision to commence
17 removal proceedings, this Court lacks jurisdiction under 8 U.S.C. § 1252, to consider
18 those claims.

19 **B. Petitioner’s Detention is Lawful and Mandatory.**

20 Petitioner is an “arriving alien” with ongoing removal proceedings, in which her
21 applications for relief from removal are being adjudicated. She is thus subject to
22 mandatory detention under 8 U.S.C. § 1225 and her claims for alleged statutory and
23 constitutional violations must fail.

24 Under 8 U.S.C. § 1225(a)(1), an “applicant for admission” is defined as an “alien
25 present in the United States who has not been admitted or who arrives in the United
26 States.” As explained above, applicants for admission “fall into one of two categories,
27 those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings*, 583 U.S.
28 at 287. Section 1225(b)(1) – the provision relevant here – applies because Petitioner is

1 an arriving alien. And that statute mandates detention when an immigration officer
2 determines that the alien has a credible fear of persecution. *See* 8 U.S.C.
3 § 1225(b)(1)(B)(ii) (“If the officer determines at the time of the interview that [the]
4 alien has a credible fear of persecution . . . , the alien *shall be detained* for further
5 consideration of the application for asylum.”) (emphasis added); *see also Matter of M-*
6 *S*, 27 I. & N. Dec. 509, 519 (AG 2019) (“all aliens transferred from expedited to full
7 [removal] proceedings after establishing a credible fear are ineligible for bond”).

8 In *Jennings*, 583 U.S. 281, 296-303 (2018), the Supreme Court evaluated the
9 proper interpretation of 8 U.S.C. § 1225(b). The Supreme Court stated that, “[r]ead
10 most naturally, [8 U.S.C.] §§ 1225(b)(1) and (b)(2) . . . mandate detention of applicants
11 for admission until certain proceedings have concluded.” *Id.* at 297. In other words,
12 neither 8 U.S.C. § 1225(b)(1) nor § 1225(b)(2) “impose[] any limit on the length of
13 detention” and “neither § 1225(b)(1) nor § 1225(b)(2) say[] anything whatsoever about
14 bond hearings.” *Id.* The Supreme Court added that the sole means of release for
15 noncitizens detained pursuant to 8 U.S.C. §§ 1225(b)(1) or (b)(2) prior to removal from
16 the United States is temporary parole at the discretion of the Attorney General under 8
17 U.S.C. § 1182(d)(5). *Id.* at 300 (“That express exception to detention implies that there
18 are no *other* circumstances under which aliens detained under [8 U.S.C.] § 1225(b)
19 may be released.”) (emphasis in original). “In sum, [8 U.S.C.] §§ 1225(b)(1) and (b)(2)
20 mandate detention of aliens throughout the completion of applicable proceedings[.]”
21 *Id.* at 302.

22 In *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 207-09 (1953), a
23 noncitizen in exclusion proceedings filed a habeas petition claiming that his prolonged
24 detention without a hearing violated his constitutional rights. The Supreme Court
25 rejected the petition, concluding that the noncitizen’s continued detention did not
26 deprive him of any due process rights, stating: “[A]n alien on the threshold of initial
27 entry stands on a different footing: ‘Whatever the procedure authorized by Congress
28 is, it is due process as far as an alien denied entry is concerned.’” *Id.* at 212 (citation

1 omitted).

2 In *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 138-40
3 (2020), the Supreme Court once again addressed the due process rights of individuals
4 like Petitioner – inadmissible arriving noncitizens seeking initial entry into the United
5 States. The Supreme Court stated that such individuals have no due process rights
6 “other than those afforded by statute.” *Id.* at 107; *see also id.* at 140 (“[A]n alien in
7 respondent’s position has only those rights regarding admission that Congress has
8 provided by statute.”). The Supreme Court noted that its determination was supported
9 by “more than a century of precedent.” *Id.* at 138 (citing *Nishimura Ekiu v. United*
10 *States*, 142 U.S. 651, 660 (1892); *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537,
11 544 (1950); *Mezei*, 345 U.S. at 212; *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)).

12 Since the Supreme Court’s decision in *Thuraissigiam*, numerous published
13 decisions have acknowledged *Thuraissigiam*’s impact on the precise Fifth Amendment
14 Due Process Clause issue raised in this petition: Does an alien detained under 8 U.S.C.
15 § 1225(b)(1) have a due process right to release or a bond hearing after being detained
16 for a certain period of time? The answer is no. *See Rodriguez Figueroa v. Garland*,
17 535 F. Supp. 3d 122, 126–27 (W.D.N.Y. 2021); *Gonzales Garcia v. Rosen*, 513 F.
18 Supp. 3d 329, 336 (W.D.N.Y. 2021); *St. Charles v. Barr*, 514 F. Supp. 3d 570, 579
19 (W.D.N.Y. 2021); *Petgrave v. Aleman*, 529 F. Supp. 3d 665, 667 (S.D. Tex. 2021); *see*
20 *also Mendoza-Linares v. Garland*, No. 21-CV-1169 BEN (AHG), 2024 WL 3316306,
21 *2 (S.D. Cal. June 10, 2024) (“[T]he Court finds that Petitioner has no Fifth
22 Amendment right to a bond hearing pending his removal proceedings.”); *Zelaya-*
23 *Gonzalez v. Matuszewski*, No. 23-CV-151 JLS (KSC), 2023 WL 3103811. *3 (S.D.
24 Cal. Apr. 25, 2023) (same).

25 Even if the Court infers a constitutional right against prolonged mandatory
26 detention, Petitioner’s claim still fails. “In general, as detention continues past a year,
27 courts become extremely wary of permitting continued custody absent a bond hearing.”
28 *Sibomana v. LaRose*, No. 22-cv-933-LL-NLS, 2023 WL 3028093, at *4 (S.D. Cal.

1 Apr. 20, 2023) (citation omitted); *see also, e.g., Sanchez-Rivera v. Matuszewski*,
2 No. 22-cv-1357-MMA-JLB, 2023 WL 139801, at *6 (S.D. Cal. Jan. 9, 2023) (detained
3 for three years); *Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS, 2024 WL 711607,
4 at *5 (S.D. Cal. Feb. 21, 2024) (over two-and-a-half years); *Yagao v. Figueroa*,
5 No. 17-cv-2224-AJB-MDD, 2019 WL 1429582, at *2 (S.D. Cal. Mar. 29, 2019) (two
6 years). Petitioner’s detention falls short of the length courts have found to raise due
7 process concerns.

8 Petitioner is detained pursuant to 8 U.S.C. § 1225, which mandates detention
9 through removal proceedings. Petitioner is not entitled to release or a bond hearing
10 before an immigration judge. This Court should deny the Petition, as there is no basis
11 to conclude that her detention violates the Fifth Amendment’s Due Process Clause. *See*
12 *Thuraissigiam*, 591 U.S. at 107, 140; *Mezei*, 345 U.S. at 212; *Guerrier*, 18 F.4th at 310.

13 **V. CONCLUSION**

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

15
16 DATED: November 21, 2025

Respectfully submitted,

17 ADAM GORDON
18 United States Attorney

19 *s/ Juliet M. Keene*
20 JULIET M. KEENE
21 Assistant United States Attorney
22 Attorney for Respondents
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